

Halsbury's CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/1. THE CROWN, THE MONARCH AND THE LAW/1. The Crown: meanings.

## **CROWN AND ROYAL FAMILY (**

### **1. THE CROWN, THE MONARCH AND THE LAW**

#### **1. The Crown: meanings.**

'The Crown' carries a number of distinct though associated meanings, chief among them being the legal and constitutional distinction to be drawn between 'the Crown as monarch' and 'the Crown as executive'<sup>1</sup>. This title is concerned principally with the Crown as monarch (or 'Sovereign')<sup>2</sup> and the personal aspects of the monarchy and royal family in the United Kingdom<sup>3</sup>. The subject of 'the Crown as executive'<sup>4</sup> is dealt with more fully elsewhere in this work<sup>5</sup>.

1 *Re M* [1994] 1 AC 377 at 395, sub nom *M v Home Office* [1993] 3 All ER 537 at 540, HL, per Lord Templeman. See also Marshall *Constitutional Theory* (1971) ch II.

2 See PARAS 2, 4 post.

3 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

4 See PARA 3 post.

5 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 351.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/1. THE CROWN, THE MONARCH AND THE LAW/2. The Crown as monarch.

## **2. The Crown as monarch.**

Originally the monarch exercised the supreme executive, legislative and judicial power of the state in person, and the Crown and the person of the monarch were synonymous legal entities<sup>1</sup>. Over the course of modern history, particularly following the enforced abdication of James II and enactment of the Bill of Rights (1688 or 1689), legal and constitutional distinctions have emerged<sup>2</sup> between (1) the personal and political capacities of the monarch<sup>3</sup>; and (2) the King or Queen regnant as an individual person and the monarchy as a public institution providing the person who is the constitutional Head of State<sup>4</sup>.

1 As to the history of the Crown see Maitland *Constitutional History of England* (1908); Anson *The Law and Custom of the Constitution* vol II, The Crown (4th Edn, 1935); Jennings *Cabinet Government* (3rd Edn, 1959).

2 Pollock and Maitland 'The King and the Crown' in Milsom (ed) *The History of English Law* (2nd Edn, 1968) pp 511-526.

3 See 1 Bl Com (14th Edn) ch 7.

4 See generally Bogdanor *The Monarchy and the Constitution* (1995). See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 351.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/1. THE CROWN, THE MONARCH AND THE LAW/3. The Crown as executive.

### **3. The Crown as executive.**

The expression 'the Crown' now describes the collective structure of central government in the United Kingdom<sup>1</sup> carried on in the name of the monarch. In the absence of a written constitution<sup>2</sup>, the Crown operates as a convenient symbol for the state<sup>3</sup>. Accordingly the United Kingdom executive is formally referred to as Her Majesty's government<sup>4</sup>; the law-making power of Parliament, of which the monarch is a constituent part, is described as being vested in the Queen-in-Parliament<sup>5</sup>; and the judicial work of the higher courts is spoken of as being carried on by Her Majesty's judges<sup>6</sup>. As a legal entity today the Crown as executive is regarded as a corporation sole or aggregate<sup>7</sup>.

1 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 As to the meaning and use of this term see Wheare *Modern Constitutions* (1951) ch II.

3 See Marshall *Constitutional Theory* (1971) ch II.

4 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 354.

5 See Erskine May *Parliamentary Practice* (22nd Edn, 1997); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 201, 232.

6 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 305 et seq; COURTS.

7 *Re M* [1994] 1 AC 377 at 395, sub nom *M v Home Office* [1993] 3 All ER 537 at 540, HL, per Lord Templeman. See also Maitland 'The Crown as Corporation' in Hazeltine, Lapseley and Winfield (eds) *Selected Essays* (1936); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 15, 353. As to litigation involving the Crown, and questions of liability, see CROWN PROCEEDINGS AND CROWN PRACTICE. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 351-393.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/1. THE CROWN, THE MONARCH AND THE LAW/4. Sovereign, monarch and the Crown.

#### **4. Sovereign, monarch and the Crown.**

The term 'sovereignty' is capable of several meanings and is essentially a term of political theory. The expression has been adopted as a means to define the nature of positive law as rules which originate from the sovereign body in a society<sup>1</sup>. In this sense, the phrase 'the sovereignty of Parliament' has been used when referring to the supreme legislative authority of a parliamentary statute after 1688<sup>2</sup>. Since in ancient times it was the King or Queen who was recognised as the ultimate political authority, or the sovereign body, the ruling monarch (the King or Queen regnant) came to be traditionally spoken of as 'the Sovereign'. In this work, however, the term 'monarch' is generally used in order to distinguish references to the King or Queen regnant from notions of political sovereignty.

1 Austin *The Province of Jurisprudence Determined* (1832).

2 Dicey *The Law of the Constitution* (1885). Dicey's terminology of 'parliamentary sovereignty' is still extensively employed today: see de Smith and Brazier *Constitutional and Administrative Law* (8th Edn, 1994) ch 4.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/1. THE CROWN, THE MONARCH AND THE LAW/5. Elizabeth II.

**5. Elizabeth II.**

The present monarch is Elizabeth II<sup>1</sup>. She succeeded her father, George VI, on 6 February 1952. Her coronation<sup>2</sup> took place on 2 June 1953.

- 1 As to the monarch's full royal style and title see PARA 39 post.
- 2 As to the form and effects of coronation see PARAS 18-26 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/1. THE CROWN, THE MONARCH AND THE LAW/6. Legal references to the King or Queen regnant.

## **6. Legal references to the King or Queen regnant.**

According to ancient law every King or Queen for the time being, whether he or she be a usurper or not, is a King or Queen regnant and is therefore protected by the law of treason<sup>1</sup>.

References in statutes to the personal name of the reigning monarch are to be construed as references to the monarch for the time being unless a contrary intention appears<sup>2</sup>. References to the 'King' in statutes includes a Queen regnant<sup>3</sup> and vice versa. The status of a Queen regnant is the same as that of a King and she exercises the regal power as fully in all respects as a King regnant<sup>4</sup>.

1 Co Inst 7; Bac Abr, Prerogative, A. See also 11 Hen 7 c 1 (Treason) (1495). As to treason generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 363 et seq.

2 Interpretation Act 1978 ss 10, 21(2), Sch 2 para 1. The Interpretation Act 1978 binds the Crown: s 21(2).

3 'The supreme executive power of these kingdoms is vested by our laws in a single person, the King or Queen: for it matters not to which sex the Crown descends; but the person entitled to it, whether male or female, is immediately invested with all the ensigns, rights and prerogatives of sovereign power': 1 Bl Com (14th Edn) 190. Blackstone based this statement on the Queen Regent's Prerogative Act 1554 (repealed by the Statute Law (Repeals) Act 1969). The Statute Law (Repeals) Act 1969 was passed as a result of *Statute Law Revision: First Report* (Law Com no 22) (Cmnd 4052) (1969). The preamble to the Statute Law (Repeals) Act 1969 states that the repeals are of enactments which are no longer of practical utility. The Queen Regent's Prerogative Act 1554 (repealed) declared that all regal power appertains to a Queen in as full and ample a manner as it does to a King; it was purely declaratory, and its repeal does not alter the law, which is now beyond dispute: see *Statute Law Revision: First Report* (Law Com no 22) (Cmnd 4052) (1969) p 33. Blackstone also spoke of the doctrine of representation which 'prevails in the descent of the Crown, as it does in other inheritances, whereby the lineal descendants of any person deceased stand in the same place as their ancestor if living would have done': 1 Bl Com (14th Edn) 193.

4 See note 3 supra.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/1. THE CROWN, THE MONARCH AND THE LAW/7. The personal legal attributes of the monarch.

## **7. The personal legal attributes of the monarch.**

The legal prerogatives of the monarch have been defined as the 'special pre-eminence which the king hath, over and above all other persons, and out of the ordinary course of the common law in right of his royal dignity'<sup>1</sup>. Some prerogative powers are said to be 'direct'<sup>2</sup> and may only be legally exercised by the monarch in person on his or her express command<sup>3</sup>, such as the appointment of a prime minister and the dissolution of Parliament<sup>4</sup>, although more generally prerogative powers are exercised by ministers and servants of the Crown.

A number of special privileges and immunities attach to the Crown<sup>5</sup>, and although these attach to the monarch primarily in her regal capacity or body politic, they are attributable also to the monarch in her natural capacity<sup>6</sup>. Thus, in law the monarch is never a minor<sup>7</sup>, and grants and leases made by the monarch during minority are valid and cannot afterwards be avoided<sup>8</sup>. In legal contemplation the monarch never dies<sup>9</sup>, and the mention of the monarch in statutes includes successors<sup>10</sup>. Allegiance is due to the monarch in her natural body as in her political capacity<sup>11</sup>. In questions relating to rights of property, where the monarch takes in her natural capacity under a gift from a subject, the full prerogative rights do not in all cases apply<sup>12</sup>.

Under the rules of statutory interpretation, the Crown both as monarch and as executive is not bound by Acts of Parliament unless referred to expressly or by necessary implication<sup>13</sup>. The monarch remains immune from legal suit or prosecution in the courts<sup>14</sup>.

1 1 Bl Com (14th Edn) 239. As to the prerogative generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq.

2 1 Bl Com (14th Edn) 239-240. See further Chitty *Law of the Prerogatives of the Crown* (1820).

3 This is subject to the possibility of a regency: see PARA 13 post.

4 See Blackburn *The Meeting of Parliament* (1990) ch IV; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 394; PARLIAMENT vol 78 (2010) PARAS 1021-1023.

5 See further PARA 46 et seq.

6 *Duchy of Lancaster Case* (1561) 1 Plowd 212 at 213.

7 Co Litt 43a, b; *Duchy of Lancaster Case* (1561) 1 Plowd 212; *Calvin's Case* (1608) 7 Co Rep 1a at 12.

8 Bac Abr, Prerogative, A; *Duchy of Lancaster Case* (1561) 1 Plowd 212.

9 The monarch dies in hoc individuo, but not in genere: *Calvin's Case* (1608) 7 Co Rep 1a at 10b. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 40.

10 It is for this reason that the Crown has been said to be a corporation sole (see PARA 3 ante), but the practical consequences of this (other than those stated in the text) are meagre: see 3 Maitland's Collected Papers 253; 9 Holdsworth's History of English Law (7th Edn) 5, 6. See, however, *Madras Electric Supply Corp v Boarland* [1955] AC 667, [1955] 1 All ER 753, HL, where the fact that the Crown, as a corporation sole, was a 'person' for the purpose of a taxing statute was crucial to the assessment of tax on the vendor of a company to the Crown. Cf the text to para 6 note 2 ante.

11 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 923; PARLIAMENT vol 78 (2010) PARA 1001.

12 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 842.

13 See PARA 48 post; and STATUTES vol 44(1) (Reissue) PARA 1321.

14 The only form of proceedings that may be brought against the monarch personally are under the ancient procedure of a petition of right. As to the distinction drawn between the public and private capacities of the monarch for the purpose of proceedings against the Crown see CROWN PROCEEDINGS AND CROWN PRACTICE.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(1) SUCCESSION TO THE CROWN/8. Title by inheritance.

## **2. THE TITLE TO THE CROWN**

### **(1) SUCCESSION TO THE CROWN**

#### **8. Title by inheritance.**

In the early middle ages title to the throne was based upon election by the Witan or Great Council of the realm, several factors being involved of which royal birth was but one<sup>1</sup>. Subsequently the notion of an hereditary right to the throne established itself, due in part to the territorial nature of feudal kingship and the rules relating to the descent of estates in property<sup>2</sup>.

1 See Maitland *Constitutional History of England* (1908); Anson *The Law and Custom of the Constitution* vol II, The Crown (4th Edn, 1935).

2 See PARA 10 post; and REAL PROPERTY vol 39(2) (Reissue) PARA 4 et seq.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(1) SUCCESSION TO THE CROWN/9. Parliamentary control of title to the Crown.

### **9. Parliamentary control of title to the Crown.**

The Act of Settlement (1700 or 1701) together with the statutes controlling the unions of England with Scotland and Ireland<sup>1</sup> currently regulate the general line of succession to the throne of the United Kingdom<sup>2</sup>. The succession is limited to the heirs of the body of the Princess Sophia, Electress of Hanover, granddaughter of James I<sup>3</sup>. The Act of Settlement (1700 or 1701) also lays down the legal conditions to which the right to the throne is subject, in order to secure the Anglican protestant succession<sup>4</sup>.

In relation to title to the throne, both the rules of succession and the conditions of tenure may be varied by Act of Parliament<sup>5</sup>. The preamble to the Statute of Westminster 1931 also declares, as an established constitutional position amongst the Commonwealth, that any alteration in the law touching the succession to the throne requires the assent of the Parliaments of all the Dominions within the Commonwealth as well as the Parliament of the United Kingdom<sup>6</sup>.

1 See the Union with Scotland Act 1706 art II; the Union with Ireland Act 1800 art 2; the Ireland Act 1949 s 1(1); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 36.

2 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

3 Act of Settlement (1700 or 1701) s 1.

4 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 39.

5 This was firmly established as part of the constitutional settlement and Bill of Rights (1688 or 1689): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 34-40.

6 See the Statute of Westminster 1931, preamble; His Majesty's Declaration of Abdication Act 1936, preamble; and COMMONWEALTH vol 13 (2009) PARA 714.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(1) SUCCESSION TO THE CROWN/10. The right of primogeniture to the Crown.

## **10. The right of primogeniture to the Crown.**

Title to the Crown remains subject to the right of primogeniture, the eldest child succeeding, male before female heirs<sup>1</sup>.

The statutory limitation under the Act of Settlement (1700 or 1701) to the heirs of the body of Princess Sophia<sup>2</sup> means that the common rules of inheritance, which recognise the right of primogeniture, as applicable to entailed interests in real property before 1926 continue to apply<sup>3</sup>. As an exception to these rules of inheritance, however, where no male heir is living on a monarch's demise but two or more female heirs who are sisters are then living, the eldest sister succeeds to the Crown: the sisters do not succeed to the throne as co-parceners<sup>4</sup>.

1 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 34.

2 See PARA 9 ante.

3 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 34, 36. As to the common law rules of inheritance and their abolition by the 1925 legislation see generally EXECUTORS AND ADMINISTRATORS; REAL PROPERTY.

4 1 Bl Com (14th Edn) 194. Thus when George VI died in 1952 leaving no son and two daughters, the eldest succeeded to the throne (Elizabeth II). As to co-parceners see REAL PROPERTY vol 39(2) (Reissue) PARAS 224-226.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(1) SUCCESSION TO THE CROWN/11. Accession to the throne.

### **11. Accession to the throne.**

The ancient legal maxim is that 'the King never dies'<sup>1</sup>. According to Blackstone, 'the King survives in his successor' and 'the right of the Crown vests, *eo instanti*, upon his heir'<sup>2</sup>. Thus in legal theory the monarch is regarded as immortal and there is no moment in which the throne is vacant<sup>3</sup>. Simultaneously upon the death of a reigning monarch, the successor accedes to the Crown and is in possession of all the prerogatives and privileges attributable to a monarch. This is notwithstanding a coronation<sup>4</sup> not yet (or ever) having taken place<sup>5</sup>.

1 1 Bl Com (14th Edn) 249.

2 See note 1 supra.

3 See PARAS 18-26 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 40.

4 As to coronations see PARAS 18-26 post.

5 Edward VIII acceded to the throne at the death of his father, George V, on 20 January 1936 and reigned for 325 days prior to his abdication without a coronation ceremony being held.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(2) INCAPACITY OF THE MONARCH/12. Minority and illness of the monarch.

## **(2) INCAPACITY OF THE MONARCH**

### **12. Minority and illness of the monarch.**

At common law no question of legal guardianship arises, as the minority in the person of the monarch is not recognised<sup>1</sup>. Prior to 1937, there were numerous occasions of minority and incapacitating illness in a reigning monarch, and each was dealt with by some temporary expedient such as a Council of Regency or Commission being authorised by the monarch to exercise the royal functions<sup>2</sup>.

A permanent statutory machinery now exists in the form of the Regency Acts 1937 to 1953<sup>3</sup> for the eventuality that the monarch is personally unsuited to perform political and public functions by reasons of (1) not yet having attained 18 years of age; (2) total incapacity through illness; or (3) non-availability<sup>4</sup>.

1 'For when the royll bodie politique of the King doth meete with the naturall capacity in one person, the whole bodie shall have the qualitie of the royll bodie politique, which is the greater and more worthy and wherein is no minoritie': Co Litt 43a, b. See also *Duchy of Lancaster Case* (1561) 1 Plowd 212; *Willion v Berkley* (1561) 1 Plowd 223 at 244.

2 George V signed a warrant for letters patent appointing counsellors of state with powers to act for him when he was seriously ill in 1928. Earlier, mental illness proved a more difficult problem because any statutory authorisation of a regency required the monarch's own Assent. On two occasions, in 1454 in respect of Henry VI and in 1810 in respect of George III, legal fictions were resorted to for the formal appearance of the reigning monarch's Assent to measures which were passed on the authority of the House of Commons and the House of Lords alone. See Anson *The Law and Custom of the Constitution* vol II (4th Edn, 1935).

3 Ie the Regency Act 1937, the Regency Act 1943 and the Regency Act 1953: see the Regency Act 1953 s 4(1); and PARA 13 post.

4 See PARA 13 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(2) INCAPACITY OF THE MONARCH/13. Regency.

### **13. Regency.**

Under the terms of the Regency Act 1937, the royal functions must be performed in the name and on behalf of the monarch by a Regent in the event that (1) the monarch is at his accession under the age of 18, and until he or she attains that age<sup>1</sup>; (2) the monarch is by reason of infirmity of mind or body incapable of performing the royal functions, and until he or she recovers<sup>2</sup>; and (3) the monarch is for some definite cause not available for the performance of those functions<sup>3</sup>.

In the case of infirmity and non-availability, the procedural prerequisite for the creation of a regency is the issue of written certificates by three or more persons, drawn from (a) the spouse of the monarch; (b) the Lord Chancellor; (c) the Speaker of the House of Commons; (d) the Lord Chief Justice of England; and (e) the Master of the Rolls<sup>4</sup>. They must declare in writing that they are satisfied by evidence of the monarch's incapacity or non-availability<sup>5</sup>. Similar certificates of recovery are necessary to terminate the regency and for the monarch to resume the royal functions.<sup>6</sup>

There are provisions for the guardianship of the monarch during a regency<sup>7</sup>.

The Regent will be the person next in line of succession to the throne<sup>8</sup>, unless he or she is disqualified<sup>9</sup>. A candidate will be disqualified if (i) he or she is not a British subject of full age and domiciled in some part of the United Kingdom<sup>10</sup>; or (ii) is a person who would be incapable of inheriting, possessing and enjoying the Crown under the terms of the Act of Settlement (1700 or 1701)<sup>11</sup>. The Regent must swear certain oaths before he acts in or enters upon his office<sup>12</sup>.

The Regent's powers do not include the power to assent to any Bill to change the order of succession to the Crown, nor for the repeal or alteration of certain statutory conditions on which the right to the Crown is subject<sup>13</sup>.

The Regency Act 1953 specifically nominates Elizabeth II's spouse, Prince Philip, the Duke of Edinburgh, to be Regent in the event that a regency becomes necessary and either she has no child or grandchild or all such persons are disqualified<sup>14</sup>.

There are also provisions enabling the monarch, in the case of lesser illness or absence from the United Kingdom, to delegate certain royal functions to Counsellors of State<sup>15</sup>.

1 See the Regency Act 1937 s 1.

2 See *ibid* s 2.

3 See *ibid* s 2. This category would include the enforced physical absence of the monarch from the country, although no precedent for a regency on this ground has as yet arisen. See Blackburn *The Meeting of Parliament* (1990) pp 54-56; de Smith and Brazier *Constitutional and Administrative Law* (8th Edn, 1998) p 132.

4 See the Regency Act 1937 s 2.

5 See *ibid* s 2. Satisfactory proof of infirmity must include a reliable medical report: see s 2.

6 See *ibid* s 2.

7 See *ibid* s 5.

8 The Heir Apparent is at present Prince Charles, the eldest son of Elizabeth II: see PARAS 30-31 post.

- 9 See the Regency Act 1937 s 3.
- 10 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.
- 11 See the Regency Act 1937 s 3. As to who would be incapable of inheriting, possessing and enjoying the Crown under the terms of the Act of Settlement (1700 or 1701) see PARA 9 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 39.
- 12 See the Regency Act 1937 s 4(1), Schedule.
- 13 See *ibid* s 4(2).
- 14 See the Regency Act 1953 s 1.
- 15 See the Regency Act 1937 s 6 (amended by the Regency Act 1943 s 1; and the Regency Act 1953 s 4(2)).

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(2) INCAPACITY OF THE MONARCH/14. Abdication and retirement.

#### **14. Abdication and retirement.**

Title to the throne attaches to the person of the monarch for life and there is no law or convention providing for a monarch's retirement.

The only abdication to occur in modern times<sup>1</sup> was that of Edward VIII in 1936, who executed an Instrument of Abdication which declared his vacation of the throne<sup>2</sup>. An Act of Parliament<sup>3</sup> was also passed which gave legal effect to the Instrument of Abdication and provided for the alteration in the line of succession<sup>4</sup>.

1 In England's earlier history, tenure of the throne by both Edward II and Richard II was terminated by means of formal (though involuntary) documentary resignations. The Bill of Rights (1688 or 1689) stated that James II's flight from the country in 1688 was an abdication of the government and throne, causing it to fall vacant: see the Bill of Rights (1688 or 1689), preamble.

2 In the Instrument of Abdication, dated 11 December 1936.

3 In His Majesty's Declaration of Abdication Act 1936.

4 The member of the royal family next in line of succession to the throne was George V's second son, the Duke of York, who became George VI. As to further consents required to alter the succession in respect of the monarch's position within certain other independent member states of the Commonwealth see COMMONWEALTH vol 13 (2009) PARA 714; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 37.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(3) LEGAL EFFECTS OF A DEMISE OF THE CROWN/15. Demise of the Crown.

### **(3) LEGAL EFFECTS OF A DEMISE OF THE CROWN**

#### **15. Demise of the Crown.**

A 'demise of the Crown' refers to the death of a monarch, and is used to describe the transfer of the kingdom to his or her successor<sup>1</sup>.

A demise of the Crown carries special legal and constitutional consequences. Although the occupation of the Crown is continuous in legal contemplation<sup>2</sup>, the death of a monarch formerly had the effect of dissolving Parliament, vacating offices under the Crown, discontinuing legal processes and indictments, and causing other inconveniences. These have been remedied by statute, and now, on the demise of the Crown, the duration of an existing Parliament is unaffected<sup>3</sup>. Where a proclamation summoning a new Parliament has been given, the demise of the Crown does not as a general rule<sup>4</sup> affect the summoning of the new Parliament in pursuance of that proclamation<sup>5</sup>. The holding of any office under the Crown, whether within or without its dominions, is not affected, nor is any fresh appointment to it rendered necessary, by the demise of the Crown<sup>6</sup>.

1 *Hill v Grange* (1555) 1 Plowd 164 at 177; *Willion v Berkley* (1561) 1 Plowd 223 at 242; *Wroth's Case* (1572) 2 Plowd 452 at 457. His Majesty's Declaration of Abdication Act 1936 (see PARA 14 ante) declared a demise of the Crown to take place immediately upon the royal Assent being signified to that Act: see s 1.

2 See PARA 11 ante.

3 See the Representation of the People Act 1867 s 51 (as amended); and PARLIAMENT vol 78 (2010) PARAS 1014-1015. If separated by adjournment or prorogation, an existing Parliament must immediately after the demise of the Crown meet, convene, and sit: see the Succession to the Crown Act 1707 ss 4, 5 (as amended); Blackburn *The Meeting of Parliament* (1990) pp 56-57; and PARLIAMENT vol 78 (2010) PARA 1014.

4 Cf the situation where the demise follows the proclamation but occurs prior to the date of the poll: see the Representation of the People Act 1985 s 20(2); and ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARA 197.

5 See *ibid* s 20(1); and ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARA 197.

6 Demise of the Crown Act 1901 s 1(1).

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(3) LEGAL EFFECTS OF A DEMISE OF THE CROWN/16. Legal process.

**16. Legal process.**

Wrists, pleas or process, or any other proceeding upon any indictment or information for any offence, and wrists, processes or proceedings for any debt or account due to be made to the Crown concerning any land, tenement or other revenue belonging to the Crown, depending at the time of the demise of the Crown, continue and remain in full force and virtue, to be proceeded upon notwithstanding the demise<sup>1</sup>.

Claims by or against the Crown and proceedings for the enforcement of such claims do not abate and are not affected by the demise of the Crown<sup>2</sup>.

1 Demise of the Crown Act 1702 s 4.

2 See the Crown Proceedings Act 1947 s 32; and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 121.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(3) LEGAL EFFECTS OF A DEMISE OF THE CROWN/17. Officers of the duchies.

### **17. Officers of the duchies.**

No office, civil or military, of the appointment of the Prince of Wales, Duke of Cornwall or Earl of Chester for the time being, within the Principality of Wales, Duchy of Cornwall or County Palatine of Chester, becomes void by the demise of the Crown, or by reason of the determination of any grant of the principality or earldom, or by reason of any descent of the duchy, or of the custody of the duchy coming to the Crown<sup>1</sup>. The offices continue for the space of six months following any of these events, unless the occupants are sooner removed or discharged by the monarch, or by the Prince of Wales, Duke of Cornwall or Earl of Chester for the time being respectively<sup>2</sup>.

Sheriffs and sheriffs' officers in the Duchy of Cornwall and the Duchy of Lancaster continue in office for the remainder of their terms upon the demise of the Crown or of the Duchy of Cornwall, unless sooner removed or superseded<sup>3</sup>.

1 See the Demise of the Crown Act 1727 s 7 (amended by the Statute Law Revision Act 1948). This provision was repealed in so far as it relates to sheriffs by the Sheriffs Act 1887 s 39, Sch 3. As to the Duchy of Cornwall see CROWN PROPERTY vol 12(1) (Reissue) PARA 318 et seq. As to the County Palatine of Chester see CROWN PROPERTY vol 12(1) (Reissue) PARA 248; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 307.

2 See the Demise of the Crown Act 1727 s 7 (as amended: see note 1 supra).

3 See the Sheriffs Act 1887 s 3(3) (as amended). This provision applies also to sheriffs generally, but is now covered to that extent, it seems, by the Demise of the Crown Act 1901 s 1(1): see PARA 15 ante. As to the appointment of sheriffs see SHERIFFS. As to the Duchy of Lancaster see CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(4) CORONATION/(i) Preparations for the Coronation: the Ceremony and Services/18. Preparations.

## **(4) CORONATION**

### **(i) Preparations for the Coronation: the Ceremony and Services**

#### **18. Preparations.**

A Committee of privy counsellors, known as the Coronation Committee, is appointed by the monarch by Order in Council<sup>1</sup> to consider, in accordance with such directions as the monarch may give, the preparations necessary to be made for the coronation. The Coronation Committee is ordered to nominate an executive committee<sup>2</sup> and also establishes a Coronation Joint Committee consisting of representatives of the United Kingdom and other member countries of the Commonwealth. Between the appointment of the Coronation Committee and the coronation ceremony numerous Privy Council orders are made arranging details of the different matters in connection with the coronation<sup>3</sup>.

1 The Order in Council appointing a Coronation Committee for the coronation of Elizabeth II was promulgated on 6 June 1952: London Gazette, 10 June 1952.

2 See the Order in Council dated 16 June 1952: London Gazette, 20 June 1952.

3 Eg an Order in Council closing Westminster Abbey to allow preparations for the solemnities.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(4) CORONATION/(i) Preparations for the Coronation: the Ceremony and Services/19. Examination of claims for services.

**19. Examination of claims for services.**

Prior to the coronation ceremony the rights of the various persons claiming (by reason of the tenure of their estates or otherwise) to be entitled to perform ancient services<sup>1</sup> at the coronation, or at the coronation banquet and procession in Westminster Hall<sup>2</sup>, are examined and adjudicated upon by the Court of Claims<sup>3</sup>.

1 As to the ancient services see PARA 21 post.

2 The banquet and procession have not been held since the coronation of George IV.

3 As to the Court of Claims see PARAS 23-26 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(4) CORONATION/(i) Preparations for the Coronation: the Ceremony and Services/20. The ceremonies.

## 20. The ceremonies.

The forms and ceremonies observed at coronations of various monarch's<sup>1</sup> have differed somewhat<sup>2</sup>. The ceremonies at the coronation of Elizabeth II were:

- 1 (1) the presentation of the monarch to the people by the Archbishop of Canterbury accompanied by the Lord High Chancellor, the Lord Great Chamberlain, the Lord High Constable and the Earl Marshal, with Garter King of Arms preceding them, and the recognition of the monarch by the people<sup>3</sup>;
- 2 (2) the taking of the coronation oath in the form provided by statute<sup>4</sup>;
- 3 (3) the presentation to the monarch of the Holy Bible<sup>5</sup>;
- 4 (4) the anointing by the Archbishop of Canterbury with the consecrated oil<sup>6</sup>;
- 5 (5) the investiture with the colobium sindonis, the supertunica or close pall of cloth of gold, with a girdle of cloth of gold<sup>7</sup>;
- 6 (6) the presentation to the monarch of the spurs and sword, and an oblation of the sword by the monarch<sup>8</sup>;
- 7 (7) the investiture with the armills, the stole royal and the robe royal, and delivery to the monarch of the orb<sup>9</sup>;
- 8 (8) the investiture with the ring, the glove, the sceptre with the cross and the rod with the dove<sup>10</sup>;
- 9 (9) the putting on of the crown;
- 10 (10) the benediction;
- 11 (11) the enthroning<sup>11</sup>;
- 12 (12) fealty by the archbishops and bishops, and homage by the peers<sup>12</sup>;
- 13 (13) the oblation by the monarch of a pall or altar cloth and an ingot of gold<sup>13</sup>; and
- 14 (14) the celebration of the holy communion<sup>14</sup>.

1 As to the form of ceremony used at the coronation of Queen Victoria see Phillimore *Ecclesiastical Law* (2nd Edn) 813. For the form and order of the ceremony used at the coronation of Edward VII, which was based on the form observed at the coronation of William IV (the last previous occasion on which a queen consort was also crowned), but was somewhat abbreviated by leaving out the litany (which was, however, previously celebrated), the sermon, and the first oblation of the pall or altar cloth and wedge of gold, and curtailing the ceremony of homage, see Bodley *Coronation of Edward VII*. At the coronation of George V, the litany, sermon and first oblation were restored; otherwise the ceremony was the same, except that the Archbishop of Canterbury crowned the Queen: see Form and Order of the Coronation of George V and Queen Mary; and Supplement to the London Gazette, 27 September 1911. At the coronation of Elizabeth II, the sermon was omitted and the litany was sung before the service began: see Supplement to the London Gazette, 20 November 1953 p 236. See also The Roll of Claims and Proceedings at the Coronation (Coronation Roll) for successive monarchs, remaining on record in the custody of the Master of the Rolls at the Public Record Office.

2 The essential ceremonies are to be found in the Liber Regalis, which is in the custody of the Dean of Westminster. It gives the forms used as early as the coronation of Richard II, and, probably, that of Edward II: see Wickham Legg *English Coronation Records* p 81, where the contents of the Liber Regalis are given. The older writers state the ceremony simply as consisting of the oath of good government (which, it seems, originally came first: see note 4 infra), the recognition and coronation: see Taylor *Glory of Regality* p 20, where he cites Doleman *Rights of the Kingdom* p 23 on the authority of other old historians.

3 This ceremony represents the old elective principle, 'Non a regnando dicitur, sed a bene regnando et ad hoc electus est': see Taylor *Glory of Regality* pp 15-16, where he cites Bracton, lib 3, c 9, and Fleta as to the early doctrine of election.

4 The oath appears to have come first originally, because, presumably, the people would not have confirmed the election of the monarch had he not promised to govern according to law. As to election see note 3 supra. The accession declaration may be taken at the coronation (as was done by George VI), but is usually taken at the meeting of Parliament: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 39. Elizabeth II made a declaration in the presence of both Houses of Parliament on 4 November 1952: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 28. As to the modifications of the present form of oath see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 39. As to the provisions of the oath see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 28.

5 The Bible is presented as the most valuable thing on earth, and signifies wisdom, royal law and the lively oracles of God: see Supplement to the London Gazette, 20 November 1953 p 6248. The rite originated at the accession of William and Mary: see Wickham Legg *English Coronation Records* Introduction xvii. In 1953 the Bible was presented by the Moderator of the General Assembly of the Church of Scotland.

6 The first English king to be anointed appears to have been Egbert, son of Ossa, King of Mercia: see Selden *Tit Hon* (1672 Edn) p 115. According to Thomas Becket, the oil was used in three places: on the head, on the breast and on the arms, which signifies glory, authority and might: see Selden *Tit Hon* (1672 Edn) p 109. The significance of the ceremony was pointed out by Robert Grosseteste, Bishop of Lincoln, to Henry III: see Selden *Tit Hon* (1614 Edn) p 135. It has been said by a modern writer that the regalia cannot be received without it: see Wickham Legg *English Coronation Records* Introduction xxxiv. Elizabeth II was anointed in the form of the cross on the palms of both hands, the breast, and the crown of the head: see Supplement to the London Gazette, 20 November 1953 p 6249.

7 See Supplement to the London Gazette, 20 November 1953 p 6249. As to a description of these items see Wickham Legg *English Coronation Records* Introduction xl.

8 The sword signifies justice, protection to the defenceless, and punishment to the offenders. The sword used for this purpose is delivered in exchange for the sword of state to the lord who carries that sword. It is by him delivered to the archbishop, who presents it to the monarch. After the sword has been girt about the monarch by the Lord Great Chamberlain (at the coronation of Elizabeth II the sword was instead held in its scabbard in her right hand) it is offered by the monarch at the altar, but is redeemed by the first-mentioned lord who receives it from the Dean of Westminster at a fixed price. In 1953 it was withdrawn from its scabbard when received from the altar. See Supplement to the London Gazette, 20 November 1953 p 6249.

9 The orb with the cross signifies that the whole world is subject to the empire of Christ. It appears in early representations sometimes as a sceptre, that is with a staff attached, and sometimes without. The sceptre and orb were first used together at the coronation of James II: see Wickham Legg *English Coronation Records* Introduction li, iii. As to a description of the stole royal and armills see Wickham Legg *English Coronation Records* Introduction xlvi.

10 The ring is the ensign of kingly dignity, and an emblem of defence of the Christian faith. It is placed on the fourth finger of the right hand. After this ceremony, and after a glove has been presented and put on the right hand, the sceptre with the cross, symbolical of kingly power and justice, is placed in the monarch's right hand, and the rod with the dove, signifying equity and mercy, in her left: see Supplement to the London Gazette, 20 November 1953 p 6250. The rod with the dove appears upon the seal of Henry I, and its use probably became customary in the reign of Richard I. See Wickham Legg *English Coronation Records* Introduction llii, llii.

11 After these ceremonies are performed the monarch is clothed with the full regal dignity. Enthroning implies elevation, and the monarch, who previously sits in King Edward's chair, is lifted up into the throne by the archbishops, bishops and peers: see Supplement to the London Gazette, 20 November 1953 p 6250. So the early kings were raised on a stone, as at Kingston (King's Stone), where certain of the Saxon kings were crowned. Note also the use of the Scone stone of Scotland in the coronation throne. After the union with Scotland, in 1706, the Scottish crown, sceptre and sword of state were directed to be kept in Scotland as they were before the union, and so to remain in all time coming, notwithstanding the union: Union with Scotland Act 1706 art xxiv.

12 Since the coronation of Edward VII, the ceremony of homage has been abbreviated. For details as to the coronation of Elizabeth II see Supplement to the London Gazette, 20 November 1953 p 6251.

13 See Supplement to the London Gazette, 20 November 1953 p 6251. The rite appears in the Liber Regalis: see Wickham Legg *English Coronation Records* p 116. Although offered at the ceremony, the pall and the ingot of gold (weighing one pound) do not, it seems, belong to the Church, but may be claimed by the Lord Chamberlain. The oblation originated in virtue of the commandment 'Thou shalt not appear empty in the sight of the Lord thy God' (Wickham Legg *English Coronation Records* p 116; cf Exodus 23:16). A Queen consort also makes an oblation of a pall or altar cloth and a mark weight of gold: see Supplement to the London Gazette, 10 November 1937 p 7074.

14      Supplement to the London Gazette, 20 November 1953 p 6251.

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## **21. Ancient services at coronation.**

Various services to be performed in connection with the coronation procession and the service at Westminster Abbey, or at the coronation banquet and procession in Westminster Hall (if they are held), are by custom or usage of a hereditary nature, either in gross, or as attendant upon or as an apanage of some particular office or title, or as an incident of the ancient tenure of land by grand serjeanty<sup>1</sup>. Although some of these services may be dispensed with by the monarch, the persons from whom they are due are bound to perform them if called upon to do so<sup>2</sup>.

1 The Coronation Proclamation dated 6 June 1952 classes all such offices as existing 'by ancient customs and usages of the realm, as also in regard of divers tenures of sundry manors, lands and other hereditaments': see the London Gazette Extraordinary, 6 June 1952 p 3165. As to tenants by grand serjeanty see PARA 22 post.

2 See the Coronation Proclamation dated 6 June 1952, where the services usually performed in Westminster Hall or in the procession there were dispensed with, saving the rights and privileges of persons claiming to perform them at any future coronation: see the London Gazette Extraordinary, 6 June 1952 p 3165.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(4) CORONATION/(i) Preparations for the Coronation: the Ceremony and Services/22. Tenants by grand serjeanty.

## **22. Tenants by grand serjeanty.**

Where the services are incidental to the ancient tenure of land known as magnum servitium, or tenure by grand serjeanty<sup>1</sup>, which was subject to peculiar properties<sup>2</sup>, they must be performed, where the tenant is able, in proper person<sup>3</sup>; and where the service, as in the case of coronation services, is to be done to the royal person of the monarch, a deputy cannot be appointed without the monarch's licence<sup>4</sup>. It seems that a tenant by grand serjeanty held also by knight's service, and that therefore the services could not properly be performed by any person below the degree of knight<sup>5</sup>; neither may the service be performed during minority, or by a woman<sup>6</sup> (although in both these cases a proper deputy may be appointed by the monarch<sup>7</sup>), nor by a limited company<sup>8</sup>.

1 Tenure by grand serjeanty existed where a man held his land of the monarch by such services as he ought to do in his own proper person, as to lead his army, carry his sword before him at his coronation, or to be his server at his coronation etc: 1 Co Inst 105b.

2 Namely (1) the land must have been held of the monarch only; (2) the service must have been done when the tenant was able in proper person; (3) the service was certain and particular; (4) the relief due differs from knight's service (it was one year's value over and above all charges and reprises); (5) the service was to be done within the realm; (6) the service was not subject to 'aid pour faire chivalier' or 'pour file marier'; and (7) paid no escuage: 1 Co Inst 105b. By the Tenures Abolition Act 1660 s 7 (repealed), the honorary services of grand serjeanty were preserved, other than those of wardship, marriage and value of forfeiture of marriage, escuages, voyages royal, and other charges incident to tenure by knight's service, and other than 'aid pour faire fitz chivalier' or 'pour file marier'. They were again preserved by the Law of Property Act 1922 s 136 (repealed), although the tenure itself is abolished. Although both preserving statutory provisions have been repealed as obsolete, the honorary services remain. See also REAL PROPERTY vol 39(2) (Reissue) PARA 10.

3 1 Co Inst 107a.

4 1 Co Inst 107a. Where the tenure is of the monarch by cornage (namely by winding a horn to give notice of the enemy's approach, which is also grand serjeanty), or to serve the monarch in war, a deputy may be appointed by the tenant: 1 Co Inst 106b, 107a.

5 1 Co Inst 107b; Taylor *Glory of Regality* p 109.

6 1 Co Inst 107b; Taylor *Glory of Regality* p 109. It is noted by Taylor that certain of the duties of the Lord Great Chamberlain, such as to carry the monarch his clothes on the morning of coronation, must, in the case of a Queen, of necessity be performed by a woman deputy (Taylor *Glory of Regality* p 111), and the same would seem to be the case in respect of kindred services by virtue of former grand serjeanty.

7 1 Co Inst 107b.

8 See PARA 24 note 1 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(4) CORONATION/(ii) The Court of Claims/23. Establishment of Court of Claim.

## **(ii) The Court of Claims**

### **23. Establishment of Court of Claim.**

The validity of claims relating to the customary services to be rendered at the time of a coronation is determined by the Court of Claims. The Office of Lord High Steward before whom the court was formerly held having become merged in the Crown<sup>1</sup>, the claims are adjudicated upon by commissioners appointed for the occasion by the monarch<sup>2</sup>. An Order by the monarch in Council is made nominating persons, or a quorum of them, to be appointed commissioners to receive, hear and determine the petitions and claims of such who by their tenures or offices are to perform any services at the coronation, and directs the issue of a commission to that end. This commission, signed with his own hand by the monarch, is passed under the Great Seal and by it those who are to call for the attendance before the court of all claiming to render such services are commissioned to hear and determine their petitions and claims according to the laws and customs of the United Kingdom<sup>3</sup>.

A proclamation declaring the monarch's pleasure touching the coronation is issued by the monarch<sup>4</sup>. This proclamation names the date for the coronation, recites that 'by ancient customs and usages of this Realm, as also in regard of divers tenures of sundry manors, lands and other hereditaments many of Our loving Subjects do claim and are bound to do and perform divers services on the said day, and at the time of the Coronation', announces details of the commission, and provides for its due execution. It also signifies the royal pleasure as to what parts of the celebrations are to be observed at the coronation and dispenses with the services and attendances of those persons who claim to perform services at such parts of the celebration as are to be omitted<sup>5</sup>.

1 The first Court of Claims of which a record exists was held on the occasion of the coronation of Richard II, in 1377, when John, King of Castile and Leon and Duke of Lancaster, presided as Lord High Steward. The court's records are on the Close Roll of 1 Ric 2, memb 45, printed in Wickham Legg *English Coronation Records* p 131. The high stewardship belonged originally, it is said, to the Grentemaisnel family, in connection with the lordship of Hinckley, and subsequently became connected with the earldom of Leicester by marriage, and descended to Simon de Montfort, on whose attainder it was granted by Henry III to Edmund Crouchback, descending from him to John of Gaunt (whose presidency over the Court of Claims at the coronation of Richard II appears to be the first recorded instance), and from him to Henry of Bolingbroke, afterwards Henry IV, in whom it became merged in the Crown: Taylor *Glory of Regality* 110; but see Wollaston *Coronation, Court of Claims Cases* (2nd Edn) p 9, as to the doubt with regard to the lordship of Hinckley. It is said that Henry IV appointed his second son, Thomas Plantagenet, as Lord High Steward. The office ceased to be a permanent post on the latter's death in 1421.

2 Until the reign of Henry VII high stewards appear to have been appointed at each coronation for holding the Court of Claims (see Wollaston *Coronation, Court of Claims Cases* (2nd Edn) p 12), and thenceforward commissioners. Wollaston *Coronation, Court of Claims Cases* (2nd Edn) p 12 cites Henry VIII's commission as omitting reference to the high steward; Taylor *Glory of Regality* p 111 note 23 cites James II's commission as referring to the high steward; Elizabeth II's commission related the duties of the commissioners to 'any Steward ... in times past'. The persons appointed to be Commissioners of the Court of Claims were the same persons who formed the Coronation Committee: see PARA 19 ante.

3 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 See PARA 21 note 2 ante.

5 See the Coronation Proclamation dated 6 June 1952 (London Gazette Extraordinary, 6 June 1952 p 3165).



Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(4) CORONATION/(ii) The Court of Claims/24. Powers of Court of Claims.

#### **24. Powers of Court of Claims.**

The Court of Claims is empowered by the commission by which it is constituted to decide on the claims<sup>1</sup>, although the monarch may withdraw a claim from the court, and transfer it to some other tribunal<sup>2</sup>. The court may, however, refer any claim to the monarch's pleasure<sup>3</sup>. A decision of the Court of Claims is not treated as res judicata so as to bar further litigation but, proceeding as it does from a very high authority, it would not be safe to call such a decision into question unless there were a very clear case<sup>4</sup>. The court reports its deliberations to the monarch with its decisions and adjudications<sup>5</sup>.

1 A claim by a limited company by virtue of its alleged tenure of land was heard in October 1952 and it was adjudged that the service claimed was one which by its nature could not be performed by a limited company and accordingly that the right to perform it could not be vested in such a company; the court adjudged that no order be made on the claim. Several other claims were similarly dealt with.

2 Eg in 1901 the opposing claims to the office of the Lord Great Chamberlain were transferred to the Committee of Privileges of the House of Lords.

3 Eg in 1838 the claim of the Earl of Huntingdon to carry one of the swords.

4 *Scrymgeour Wedderburn v Earl of Lauderdale* [1910] AC 342 at 364, HL, per Lord Loreburn LC.

5 See the Coronation Roll 1953, 23 January 1953.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(4) CORONATION/(ii) The Court of Claims/25. Procedure.

## **25. Procedure.**

No compelling precedents being in existence with regard to the Court of Claims, the rules of procedure and evidence to be observed are such as may be formulated by the commissioners. In 1952 the court issued a notification:

- 15 (1) that all claims must be made by petition, which might be sent to the clerks of the Court of Claims at the Privy Council Office;
- 16 (2) that petitioners need not appear in person unless summoned;
- 17 (3) that petitioners might appear by counsel, solicitors or agents; and
- 18 (4) that, if a claim was admitted in 1936 or 1937, all that was required from the petitioner or his representative was a short formal petition, without appearance, stating that he was the same petitioner, or his representative, and, if representative, in what capacity, and that a petition was allowed in 1936 or 1937; that if there was no counterclaim the clerks would place the claim in the list in order that it might be formally admitted upon the court being satisfied that the claimant represented the person whose claim was admitted in 1936 or 1937; that no claim excluded by the court in 1936 as inappropriate by reason of the royal proclamation would be placed on the list; and that any claim which in 1936 was referred to the executive committee for the purposes of arrangements for the coronation would be referred to the same committee<sup>1</sup>.

The strict rules of evidence have been relaxed so that the court has not inquired too strictly into whether documentary evidence was produced from the proper custody. Petitioners have had to give notice whether they appeared in person or by counsel or agent<sup>2</sup>.

The judgments of the court are recorded by the Clerk of the Crown in Chancery, who is entitled to act as clerk of the court, and are entered on the coronation roll<sup>3</sup>. It is customary now for the Coronation Committee to order the Registrar of the Privy Council to assist the Clerk of the Crown as an officer of the court.

1 London Gazette, 22 July 1952 p 3947.

2 See Wollaston *Coronation, Court of Claims Cases* (2nd Edn).

3 The claim of the Clerk of the Crown in Chancery to act in this capacity was allowed by the Court of Claims in 1901 (see Wollaston *Coronation, Court of Claims Cases* (2nd Edn) pp 164-165), and confirmed in 1911, 1937 and 1952.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/2. THE TITLE TO THE CROWN/(4) CORONATION/(ii) The Court of Claims/26. Hereditary offices.

## **26. Hereditary offices.**

The existing offices connected with the coronation which have been allowed by the Court of Claims as hereditary in gross are those of Lord Great Chamberlain, the right to carry the great spurs<sup>1</sup>, and certain Scottish and Irish offices. Certain other hereditary offices are either doubtful or obsolete<sup>2</sup>.

1 See Taylor *Glory of Regality* p 138 (citing MS Cott Vesp, cxiv p 133; Harl 592 p 24), where the right is stated to descend to Lord Grey de Ruthyn by descent from the family of Hastings, Earls of Pembroke; Collins *Baronies by Writ* pp 242-243. At the coronation in 1953 the court held that Lord Hastings and Lord Churston had each established a claim to perform this service and referred to the pleasure of Her Majesty to determine how such service should be performed.

2 The office of Earl Marshal is hereditary in the family of the Duke of Norfolk, and is exercised by him: see Adye *Courts-martial* p 8; Squibb *High Court of Chivalry* p 128. See generally Wollaston *Coronation, Court of Claims Cases* (2nd Edn); Taylor *Glory of Regality*. For the decisions of the Court of Claims in connection with the coronation of Elizabeth II see the Times, 1 November 1952; and the Coronation Roll 1953.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/3. THE ROYAL FAMILY/(1) IN GENERAL/27. The royal family.

### **3. THE ROYAL FAMILY**

#### **(1) IN GENERAL**

##### **27. The royal family.**

The expression 'the royal family' carries no strict legal definition. However, certain relatives of the monarch possess special privileges<sup>1</sup> and are subject to special common law or statutory provisions<sup>2</sup>.

Traditionally members of the royal family perform a public social or ceremonial function by virtue of the legal institution of monarchy, and this is reflected in the styles and forms of precedence<sup>3</sup> which are in existence.

1 See PARA 28 et seq.

2 These include the Civil Lists Acts (see PARA 70 et seq post), the Regency Acts (see PARA 13 ante) and the Royal Marriages Act 1772 (see PARA 36 post).

3 See PARA 34 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/3. THE ROYAL FAMILY/(2) THE MONARCH'S SPOUSE/28. The husband of a Queen regnant.

## **(2) THE MONARCH'S SPOUSE**

### **28. The husband of a Queen regnant.**

At common law the husband of a Queen regnant<sup>1</sup> is a private citizen, but he is usually granted special privileges either by letters patent or by Act of Parliament. The formal position of the husband of a Queen regnant has varied considerably, according to the personal and constitutional circumstances of each case. The husband of Queen Victoria, Prince Albert of Saxe-Coburg and Gotha, had the special title of Prince Consort conferred upon him by letters patent on 25 June 1857<sup>2</sup>. The husband of Queen Mary, who succeeded to the throne upon the enforced abdication<sup>3</sup> of her father James II in 1688, was declared William III in his own right by the Bill of Rights (1688 or 1689)<sup>4</sup>.

The husband of Elizabeth II is His Royal Highness Prince Philip, Duke of Edinburgh, Earl of Merioneth and Baron Greenwich<sup>5</sup>. He was invested by Elizabeth II, with precedence next to herself<sup>6</sup>, shortly after her accession on 6 February 1952. Prince Philip was not styled Prince Consort nor was he crowned at the Queen's coronation on 2 June 1953<sup>7</sup>. Prince Philip is a Privy Counsellor<sup>8</sup> and led the acts of homage by the peerage at the Queen's coronation<sup>9</sup>. He was granted the style and title of a Prince of the United Kingdom by letters patent of the Queen on 22 February 1957.

The husband of a Queen regnant is guilty of treason if he compasses or imagines the death of the Queen regnant<sup>10</sup>, and he is not protected by the law of treason himself<sup>11</sup>. He possesses no special privileges as a litigant<sup>12</sup>.

1 The common law relating to the husband of a Queen regnant is not as developed as the common law relating to the wife of a King regnant (see PARA 29 post), due to the fewer occasions upon which a Queen regnant has succeeded to the throne under the ancient laws of male primogeniture. As to primogeniture see PARA 10 ante.

2 London Gazette, 26 June 1857. Prince Albert was naturalised by statute (3 & 4 Vict c 2 (Naturalisation of Prince Albert) (1840) (now repealed)), and created Prince Consort by letters patent in 1857. The words in the Act of Settlement (1700 or 1701) s 3 (as amended) preventing a person born out of the United Kingdom from becoming a Privy Counsellor or having any grant of lands, tenements or hereditaments from the Crown to himself or to any other or others in trust for him, although he be made a denizen, unless he is born of English parents, do not apply to Commonwealth citizens or citizens of the Republic of Ireland: see the British Nationality Act 1981 s 52(6), Sch 7. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

3 See PARA 14 ante.

4 It was declared that the entire, perfect and full exercise of the regal power should be only in and executed by his Majesty in the names of both their Majesties during their joint lives: see the Bill of Rights (1688 or 1689) s 1.

5 The style of His Royal Highness was authorised and the peerage titles conferred upon Prince Philip by George VI, shortly before his marriage to Princess Elizabeth, on 20 November 1947: see London Gazette, 21 November 1947.

6 See the London Gazette, 30 September 1952. As to the provisions made for him under the Civil List Act 1952 s 3 (as amended) see PARA 72 post. Prince Philip was naturalised according to the usual statutory requirements: see the London Gazette, 18 March 1947. As to naturalisation see BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARAS 37-39.

7 Ie unlike the coronation of George VI, when the Queen Consort was crowned: see PARA 29 post.

8 Prince Philip was introduced by command of George VI to the Privy Council of 4 December 1951.

9 See PARA 20 ante.

10 3 Co Inst 8.

11 3 Co Inst 7.

12 For an action by the husband of a Queen regnant in the ordinary form see *Prince Albert v Strange* (1849) 1 Mac & G 25 (a bill was filed against certain persons for the infringement of copyrights belonging to Prince Albert and the Queen respectively, the Attorney General being joined as co-defendant; information was also filed by the Attorney General on behalf of the Crown).

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/3. THE ROYAL FAMILY/(2) THE MONARCH'S SPOUSE/29. The wife of a King regnant.

## **29. The wife of a King regnant.**

The wife of a King regnant is styled the 'Queen Consort'. A Queen Consort remains a private citizen and is not entitled as of right to be crowned<sup>1</sup>.

The life and chastity of a Queen Consort are protected by the law of treason during her marriage to the King regnant<sup>2</sup>. She herself will be guilty of treason if she consents to the violation of her chastity<sup>3</sup>, or if she compasses or imagines the death of the King regnant<sup>4</sup>.

A Queen Consort enjoys distinct prerogatives and privileges. She is not subject to any toll, fine or amercement<sup>5</sup>. She is entitled to her own courts and officers, and may be represented in court by her own Attorney General and Solicitor General who are entitled to a place within the Bar with King's Counsel<sup>6</sup>. It is said that her writ does not abate as in the case of an ordinary person, but only as in the case of the King regnant<sup>7</sup>; nor can she be made to give security for or to pay costs<sup>8</sup>. A Queen Consort's proper style in suits and actions has been, 'Her most sacred Majesty' (adapting the style and title of the King regnant)<sup>9</sup>. At law the Queen Consort is treated as a feme sole<sup>10</sup>, though today this is largely of historical significance<sup>11</sup>. Ancient records state that when a whale is captured in the narrow seas adjoining the coast, being a royal fish, the taker may have the body but the head belongs to the King regnant whilst the tail belongs to his wife<sup>12</sup>.

Upon the death of the King regnant, his widow becomes the Queen dowager<sup>13</sup>, and financial provision is made for her under the Civil Lists Acts<sup>14</sup>.

1    *Queen Caroline's Claim to be Crowned* (1821) 1 State Tr NS 949. Queen Elizabeth the Queen Mother was crowned in 1937 at the coronation of George VI. The ceremonies performed by the Archbishop of Canterbury were: (1) an anointing upon the head; (2) investiture with a ring on the fourth finger of the right hand as the seal of faith; (3) coronation; and (4) investiture with two sceptres. As to the ceremonies performed during the coronation of George VI see the Supplement to the London Gazette, 10 November 1937 p 7073.

2    See the Treason Act 1351; 3 Co Inst 8; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 363.

3    Vin Abr, Prerogative, Be. On the death of the King regnant his widow ceases to be protected by the law of treason and ceases to be guilty of treason for breach of her chastity.

4    See 3 Co Inst 8; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 363.

5    Co Litt 133b.

6    Selden, tit Hon 1, 6, 7.

7    YB 18 Edw 3, pp 29-31 (Rolls Series); YB 17 & 18 Edw 3, p 435 (Rolls series).

8    3 Bl Com (14th Edn) 400; Fitz Nat Brev 101a; Co Litt 133a.

9    See 2 Chitty on Pleading (1831 Edn) p 25. A Queen Consort may sue by information, it appears. As to information by the Queen Consort see *A-G to the Prince of Wales v St Aubyn* (1811) Wight 167 at 202; *Floyd's Case* (1618) 1 Roll Abr 213. Petition lay only to the King regnant, and not to the Queen Consort or the Prince of Wales: Staundford, *Prerogativa Regis*, 75b. Petitions of right against the Crown were abolished by the Crown Proceedings Act 1947 (see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 111); but since there is saving in the Crown Proceedings Act 1947 for proceedings by the Crown otherwise than in right of Her Majesty's government (see s 40(2)(c); and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 103) it seems that the right of a Queen Consort to proceed by information has not been affected by the Crown Proceedings Act 1947.

10    In an unmarried woman. The Queen Consort was therefore able to enter into contracts and sue and be sued without joining her husband: Co Litt 133a, where the reason is given that the King regnant should not be disquieted by his wife's legal proceedings. As to suits by the Queen Consort as a feme sole see also YB II Hen 4, p 67, pl 26; YB 3 Hen 7, p 14, pl 22; *Queen Philippa v Abbess of Chichester* (1344) YB 18 Edw 3, fo 1, pl 16; *Clarke v Pennifather* (1584) 4 Co Rep 23b.

Similarly it is provided that a Queen Consort is capable of taking, granting or disposing of property as a feme sole: see the Crown Private Estate Act 1800 s 8. This and the following provisions are merely declaratory, it seems, of the common law, by which she was always enabled to perform acts of ownership without the King regnant's concurrence (see 4 Co Inst 23b) and to take a grant from him. A Queen Consort may, during the joint lives of herself and the King regnant, by deed under hand and seal, attested by two or more witnesses, or by last will in writing, signed and published in the presence of and attested by three or more witnesses, dispose of any freehold estate or inheritance, or any copyhold or customary estate belonging to her, whether in trust or otherwise, or any part of it. She is also expressly empowered by last will in writing to give and bequeath all chattels real and personal, and personal estate belonging to her, as freely as if sole and unmarried (see the Crown Private Estate Act 1800 s 9). These provisions do not enable her to dispose of any palace, or capital mansion house, gardens, land or hereditaments belonging to the monarch in right of the Crown, and vested in her for her life, by way of jointure, or otherwise, by letters patent or Act of Parliament, or to make any disposition which she could not make if sole and unmarried (see s 9).

11    A married woman now has the same civil legal capacity as a feme sole: see the Law Reform (Married Women and Tortfeasors) Act 1935 s 1 (as amended); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 204.

12    1 Bl Com (14th Edn) 221; Prynne's Aurum Regiae 127. 'The reasons of this whimsical division, as assigned by our ancient records, was to furnish the queen's wardrobe with whalebone. The reason is more whimsical than the division, for the whalebone lies entirely in the head': 1 Bl Com (14th Edn) 221. As to royal fish see CROWN PROPERTY vol 12(1) (Reissue) PARA 229.

13    See PARA 32 post.

14    See the Civil List Act 1937 s 3 (as amended); and PARA 72 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/3. THE ROYAL FAMILY/(3) THE HEIR APPARENT AND HIS WIFE/30. The Heir Apparent and his titles.

### **(3) THE HEIR APPARENT AND HIS WIFE**

#### **30. The Heir Apparent and his titles.**

The eldest son of the reigning monarch is the Heir Apparent<sup>1</sup>. He is customarily appointed Prince of Wales and Earl of Chester by letters patent, these titles not being inheritable<sup>2</sup>. The present Heir Apparent, Prince Charles, was created Prince of Wales and Earl of Chester on 26 July 1958 and invested with the insignia of these titles on 1 July 1969 at Caernarvon Castle<sup>3</sup>.

While the monarch's eldest son<sup>4</sup> is Heir Apparent, he is also Duke of Cornwall, by inheritance<sup>5</sup>, in the peerage of England and is entitled to the duchy's revenues<sup>6</sup>. The duchy vests in the monarch's eldest surviving son immediately he becomes Heir Apparent<sup>7</sup>. Where the Heir Apparent dies leaving a son, the title and possessions of the duchy do not vest in the son, but revert to the Crown<sup>8</sup>; for although the eldest son of the Heir Apparent becomes himself Heir Apparent on the death of his father, yet, not being the eldest son of the monarch, he is not within the limitations of the charter<sup>9</sup>.

Other titles inherited by the Heir Apparent are those of Duke of Rothesay, Earl of Carrick, and Baron of Renfrew in the peerage of Scotland, Lord of the Isles and Great Steward of Scotland<sup>10</sup>.

1 Where a reigning monarch has no son but one or more daughters, the eldest daughter is known as the Heiress Presumptive: see PARA 33 post.

2 4 Co Inst 243; 1 Bl Com (14th Edn) 194. The title of Prince of Wales was originated by Edward I, who conferred it upon his second son, Edward, on the conquest of Wales in 1284: see 2 *Hume's History of England* 243.

3 Prince Charles was then aged 20. The late Duke of Windsor was created Prince of Wales and Earl of Chester by letters patent dated 23 June 1910, and was invested at Caernarvon Castle on 13 July 1911 at the age of 17.

4 There is a conflict of opinion whether the word 'primogenitus' in the charter by which Edward III conferred the Duchy upon the Black Prince is confined to legitimate first-born sons, or whether it includes the eldest surviving son. The former opinion is expressed by Coke (see *The Prince's Case* (1606) 8 Co Rep 1a at 30a); the contrary is affirmed by Lord Hardwicke (see *Lomax v Holmden* (1749) 1 Ves Sen 290 at 294), who cites Henry VIII and Edward VI as instances of legitimate second sons taking by inheritance. This was also true of George V. By contrast George III did not hold the style of Duke of Cornwall as his father, Fredrick, Prince of Wales, died in the lifetime of George II.

5 *The Prince's Case* (1606) 8 Co Rep 1a. The Black Prince was originally created Duke of Cornwall by charter of Edward III in 1337. As to title to the duchy generally see CROWN PROPERTY vol 12(1) (Reissue) PARA 318 et seq.

6 As to the Heir Apparent's position in respect of the Civil List Acts see PARA 70 et seq post; and as to the revenues of the Duchy of Cornwall see CROWN PROPERTY vol 12(1) (Reissue) PARA 318 et seq.

7 See Com Dig, Roy, G. Thus the late Duke of Windsor became Duke of Cornwall on the accession of his father as George V; the present Prince of Wales became Duke of Cornwall on the accession of his mother as Elizabeth II.

8 Thus, on the death of the Black Prince in the life of Edward III, his son Richard did not take the title by descent, but was created Duke of Cornwall by special charter: *The Prince's Case* (1606) 8 Co Rep 1a at 30a; and see Com Digs, Roy, G; 1 Hale PC 125, 126.

9 As to the limitations of the charter see CROWN PROPERTY vol 12(1) (Reissue) PARA 318.

10 These titles are inherited under an Act of the Scottish Parliament, 27 November 1469: see Acts of the Parliaments of Scotland, Jac 3, c 3, App III p 187. By Proclamation dated 17 July 1917, SR & O 1917/731, the titles of Prince of Saxe-Coburg and Gotha and Duke of Saxony, which were formerly enjoyed by members of the royal family, were abandoned.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/3. THE ROYAL FAMILY/(3) THE HEIR APPARENT AND HIS WIFE/31. Status and privileges of the Heir Apparent and his wife.

### **31. Status and privileges of the Heir Apparent and his wife.**

The person of the Heir Apparent and the chastity of his wife during coverture is protected by the law of treason<sup>1</sup>. These provisions extend to the Heir Apparent whether he is the first-born son or not, unless he is a collateral<sup>2</sup>.

The Heir Apparent and his wife occupy the same legal status as private citizens<sup>3</sup> apart from (1) the special privileges which he enjoys as Duke of Cornwall<sup>4</sup>; (2) the statutory provision made for any widow he may leave<sup>5</sup>; (3) the right of precedence enjoyed by all children of the reigning monarch<sup>6</sup>; and (4) the restrictions as to marriage imposed upon certain members of the royal family<sup>7</sup>.

1 See the Treason Act 1351; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 363.

2 3 Co Inst 8, 9.

3 Thus it seems that at common law the Prince of Wales could sue and be sued in the ordinary manner: YB 21 Edw 3, Mich pl 46. See also 1 Hen 5, Trin pl 2. For an instance of a suit in the ordinary form against the Princess of Wales see *Princess of Wales v Earl of Liverpool* (1819) 3 Swan 567 at 569. As to limitation of actions against the Duke of Cornwall see LIMITATION PERIODS vol 68 (2008) PARA 903.

4 As to these privileges see CROWN PROPERTY vol 12(1) (Reissue) PARA 318 et seq.

5 Eg under the Civil List Act 1952 s 6 (as amended): see further PARA 72 post.

6 See PARA 34 post.

7 See PARA 36 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/3. THE ROYAL FAMILY/(4) OTHER MEMBERS OF THE ROYAL FAMILY/32. The Queen Dowager.

## **(4) OTHER MEMBERS OF THE ROYAL FAMILY**

### **32. The Queen Dowager.**

On the death of a King regnant the Queen Consort becomes the Queen Dowager, and ceases to be protected by the law of treason, on the basis that any attempt upon her life or chastity would no longer endanger the succession<sup>1</sup>.

Coke stated that the monarch's licence is required before a Queen Dowager can remarry<sup>2</sup>. Upon remarriage a Queen Dowager does not lose her style and dignity, in a similar manner to dowager peeresses who are not peers by birth<sup>3</sup>. According to Blackstone, the Queen Dowager retains most of the legal privileges which she enjoyed as Queen Consort<sup>4</sup>.

1 1 Bl Com (14th Edn) 222. The mother of Elizabeth II is known as Queen Elizabeth the Queen Mother.

2 Coke cited 8 Hen 6, No 7, or 6 Hen 6, No 41 in 2 Co Inst 18. However, there seems to be some doubt whether this statute ever existed: see Co Litt 133b; 1 Bl Com (14th Edn) 222.

3 2 Co Inst 50; 1 Bl Com (14th Edn) 222.

4 1 Bl Com (14th Edn) 222; para 29 ante. It is not clear to what privileges this principle extends.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/3. THE ROYAL FAMILY/(4) OTHER MEMBERS OF THE ROYAL FAMILY/33. The monarch's eldest daughter.

### **33. The monarch's eldest daughter.**

The eldest daughter of a reigning monarch customarily has the style of Princess Royal conferred upon her by letters patent. The style of Princess Royal is held for life and is not a title capable of being inherited. Elizabeth II's eldest daughter, Princess Anne, was declared Princess Royal in 1987<sup>1</sup>.

The eldest daughter of a reigning monarch may be regarded as Heiress Presumptive, but cannot be Heiress Apparent, since her right to succeed to the Crown is always liable to be defeated by the birth of a brother<sup>2</sup>. The monarch's eldest daughter, even when Heiress Presumptive, is not created Princess of Wales<sup>3</sup>.

It is treason to violate the chastity of the monarch's eldest daughter, being unmarried<sup>4</sup>.

Apart from (1) the right of precedence<sup>5</sup>; (2) the restriction with regard to royal marriages<sup>6</sup>; and (3) the provision for the maintenance of the monarch's daughters which may be contained in the Civil List Acts<sup>7</sup> and which apply equally to the monarch's eldest daughter as to other children of the reigning monarch, she occupies, in general, the same legal status as a private citizen.

1 The previous holder of the title was Princess Mary, the only daughter of George V, who was declared Princess Royal in 1932 and died in 1965 (thus precluding Elizabeth II from holding the title).

2 The proclamation announcing the accession of Queen Victoria contained a clause saving the rights of any posthumous issue of William IV.

3 In 1525 Mary Tudor was sent to Ludlow Castle, clearly with the object of exercising all the powers of a Princess of Wales, and she was generally known by that title, although not in purely legal documents: 36 *Dictionary of National Biography* 334.

4 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 363.

5 See PARA 34 post.

6 See PARA 36 post.

7 See PARA 73 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/3. THE ROYAL FAMILY/(4) OTHER MEMBERS OF THE ROYAL FAMILY/34. Style and precedence of other members.

#### **34. Style and precedence of other members.**

The children of the sons of the monarch are entitled to the style of Royal Highness, this privilege having been conferred upon them by letters patent<sup>1</sup>. Other members of the royal family may hold this style at the discretion of the monarch.

Precedence has been conferred upon certain members of the royal family by statute, which provides that no person except the monarch's children may presume to sit or have place at the side of the cloth of estate in the Parliament chamber<sup>2</sup>; and certain great officers named are to have precedence above all dukes, except only such as happen to be the monarch's son, brother, uncle, nephew<sup>3</sup> or brother's or sister's son<sup>4</sup>.

Annuities payable out of the public revenues have been provided for certain members of the royal family<sup>5</sup>, and statutory restrictions are imposed on royal marriages<sup>6</sup>, but in other respects they are ordinary citizens.

1 See London Gazette, 5 February 1864. As to the name borne by children of the monarch and their descendants see PARA 39 post.

2 See the House of Lords Precedence Act 1539 s 1; and PARLIAMENT vol 78 (2010) PARA 841. For a list of the various descendants of the royal family see Burke's Peerage *The Royal Lineage*. See also PARA 36 post.

3 This term was interpreted by Sir Edward Coke to mean grandson (nepos) (see 4 Co Inst 362), and was subsequently extended by a resolution of the House of Lords so as to include grandchildren (see Lords Journals, 24 April 1760). As to the precedence of subjects generally see PEERAGES AND DIGNITIES.

4 See the House of Lords Precedence Act 1539 s 4; and PARLIAMENT vol 78 (2010) PARA 841.

5 As to annuities to the royal family see PARA 72 post.

6 See PARA 36 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/3. THE ROYAL FAMILY/(5) THE MONARCH'S AUTHORITY OVER THE ROYAL FAMILY/35. The monarch's general authority over the royal family.

## **(5) THE MONARCH'S AUTHORITY OVER THE ROYAL FAMILY**

### **35. The monarch's general authority over the royal family.**

At common law the education and care of the members of the royal family, and the right of appointing their governors, instructors and other servants, and approving their marriages, belongs to the monarch. This right extends at least as far as to grandchildren and the Heir Presumptive<sup>1</sup>, whilst instances are to be found of its reaching to nephews and nieces and more distant collaterals<sup>2</sup>. These rights as to the marriages of descendants of the body of George II are now superseded by statutory provisions<sup>3</sup>.

1 This question was proposed to the judges by George I in 1717, and 10 out of 12 gave it as their opinion that the monarch's right of supervision extended to his grandchildren and the Heir Presumptive whilst minors, and that he had the right to approve their marriages after their majority: see Fortes Rep 401-440. The same opinion was unanimously given by the judges in 1772 as to children and grandchildren other than the issue of princesses married into foreign families, but to what other branches of the royal family the right extended was not precisely determined: see Lords Journals, 28 February 1772; 1 Bl Com (14th Edn) 225-226; and note 2 infra.

2 According to Blackstone the instances of the monarch's interposition most frequently extend only as far as nephews and nieces, although examples are to be found of its reaching to more distant collaterals: see 1 Bl Com (14th Edn) 225-226, where the authority of Rymer is given for the extension of the monarch's supervision to brothers and sisters, nephews and nieces, great-nieces, first, second, third and fourth cousins, and to the blood royal in general.

3 See PARA 36 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/3. THE ROYAL FAMILY/(5) THE MONARCH'S AUTHORITY OVER THE ROYAL FAMILY/36. The monarch's consent to royal marriages.

### **36. The monarch's consent to royal marriages.**

No descendant of the body of George II<sup>1</sup>, male or female, under the age of 25 years (other than the issue of princesses who marry into foreign families) is capable of contracting matrimony without the previous consent of the monarch signified under the Great Seal and declared in council; and, subject as stated below, every marriage or matrimonial contract of any such descendant without such consent first had and obtained is null and void<sup>2</sup>. If obtained, the monarch's consent is directed to be set out in the licence and register of marriage and to be entered in the books of the Privy Council<sup>3</sup>.

However, descendants of the body of George II, being above the age of 25 years, upon giving notice to the Privy Council, which is to be entered in the council books, may contract a valid marriage without the consent of the monarch at any time after the expiration of 12 months from the giving of the notice, unless in the meanwhile both Houses of Parliament expressly declare their disapprobation of the intended marriage<sup>4</sup>.

Certain statutory provisions relating to marriage generally<sup>5</sup> do not extend to royal marriages<sup>6</sup>.

1 As to the descendants of the body of George II see PARA 35 ante.

2 See the Royal Marriages Act 1772 s 1. This enactment, made in consequence of the marriage of the then Duke of Cumberland to Mrs Horton, and of the Duke of Gloucester to Lady Waldegrave (see the Annual Register 1772 pp 83-84), is principally declaratory of the common law (see PARA 35 note 1 ante). Before the passing of the Royal Marriages Act 1772, the want of the monarch's approbation did not invalidate marriages, but rendered the parties liable to punishment for contempt. The Royal Marriages Act 1772 did not apply to the late Duke of Windsor after his abdication and would not apply to his descendants, if any: see His Majesty's Declaration of Abdication Act 1936 s 1(3). As to abdication see PARA 14 ante. It has been doubted whether there is anyone to whom the Royal Marriages Act 1772 would now apply: see d'O Farran 'The Royal Marriages Act, 1772' 14 Mod LR 53. Nevertheless it remains the practice for the monarch's consent to be sought to the marriage of any member of the royal family.

3 See the Royal Marriages Act 1772 s 1. The effect of this enactment is to prohibit contracts for any marriage, and render void any marriage wherever contracted or solemnised in contravention of it: *The Sussex Peerage* (1844) XI Cl & Fin 85, HL.

4 See the Royal Marriages Act 1772 s 2.

5 Ie the Foreign Marriage Act 1892 (see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 215 et seq); the Marriage Act 1949 (see generally MATRIMONIAL AND CIVIL PARTNERSHIP LAW); and the Private International Law (Miscellaneous Provisions) Act 1995 ss 5, 6 (validity of marriages under a law which permits polygamy: see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 240).

6 See the Foreign Marriage Act 1892 s 23; the Marriage Act 1949 s 79(5); and the Private International Law (Miscellaneous Provisions) Act 1995 s 8(1).

### **UPDATE**

### **36. The monarch's consent to royal marriages**

TEXT AND NOTES 1-3--For an example of the giving of such consent see the London Gazette no 55474, 4 May 1999.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/3. THE ROYAL FAMILY/(6) CHARITABLE ORGANISATIONS ASSOCIATED WITH THE ROYAL FAMILY/37. In general.

## **(6) CHARITABLE ORGANISATIONS ASSOCIATED WITH THE ROYAL FAMILY**

### **37. In general.**

Members of the royal family, as part of their public work, serve as patron or president to a wide variety of organisations, most of which are charitable trusts financed through voluntary private subscription and donations. Leading organisations personally associated with the royal family (or one of its individual members) include The Prince's Trust<sup>1</sup> (of which the Prince of Wales is executive President) and the Save the Children Fund<sup>2</sup> (of which the Princess Royal has been President since 1970).

The Diana, Princess of Wales Memorial Fund is not operationally connected with the royal family<sup>3</sup>.

1 See PARA 38 post.

2 Founded in 1919, the Save the Children Fund (registered charity no 213890) is concerned with child health and welfare. It is one of the largest international voluntary agencies in the United Kingdom. As to charities generally see CHARITIES. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

3 Upon the divorce of the Prince and Princess of Wales, on 28 August 1996, Diana, Princess of Wales' earlier style of Her Royal Highness was revoked as part of their divorce settlement. Elizabeth II stated that Diana, Princess of Wales, as the mother of Prince William, eldest son of the Heir Apparent, would continue to be regarded as a member of the royal family and she would from time to time perform public functions at which she would be accorded the same precedence as she enjoyed previously: Announcement by the Press Secretary to the Queen (Status and Role of the Princess of Wales), 12 July 1996.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/3. THE ROYAL FAMILY/(6) CHARITABLE ORGANISATIONS ASSOCIATED WITH THE ROYAL FAMILY/38. The Prince's Trust.

### **38. The Prince's Trust.**

The Prince's Trust was established in 1976 with the Prince of Wales, the Heir Apparent, as its first President<sup>1</sup>. The object of the Prince's Trust is (1) to promote by all charitable means the mental, spiritual, moral and physical development and improvement of young people; (2) to provide opportunities for them to develop their full capacities; and (3) to enable them to become responsible members of society, in order to improve their conditions in life<sup>2</sup>. The Prince's Trust provides financial support to organisations and individuals (normally between the ages of 14 and 25 years) distributed through a network of local volunteer committees<sup>3</sup>. The Prince's Trust is managed<sup>4</sup> by a council whose members are nominated for appointment by the President, and may include a chief executive. The Prince's Trust is empowered to raise its funds by accepting donations or subscriptions from individuals, trusts and companies, and through organising appeals and special events, provided that no permanent trading activities are undertaken.

There are a number of subsidiary charities to the Prince's Trust, including the The Prince's Youth Business Trust and The Prince's Trust Action<sup>5</sup>. The trustees of the Prince's Trust also serve as trustees of The King George's Jubilee Trust and The Queen's Silver Jubilee Trust<sup>6</sup>, both of which provide an endowment from which the Prince's Trust may draw a limited income.

1 See generally the Memorandum of Association of The Prince's Trust, 17 November 1995 (registered charity nos 105379 and 312722). The Prince of Wales must nominate his successor, with the council of the Prince's Trust's unanimous approval.

2 Memorandum of Association of The Prince's Trust, 17 November 1995 clause 3.

3 In the financial year ending 31 March 1997 the total resources available to The Prince's Trust were £10,974,000, of which £8,946,000 was used to fund grants and charitable programmes (information provided by The Prince's Trust).

4 See generally Articles of Association adopted by special resolution on 19 March 1998, clause 4.

5 Registered charity nos 295659 and 1018177.

6 See PARA 37 ante.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/4. ROYAL TITLES AND INSIGNIA/39. The style and titles of the monarch.

## 4. ROYAL TITLES AND INSIGNIA

### 39. The style and titles of the monarch.

The present royal style and titles of the monarch in the United Kingdom<sup>1</sup> are 'Elizabeth II<sup>2</sup>, by the Grace of God of the United Kingdom of Great Britain<sup>3</sup> and Northern Ireland<sup>4</sup> and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith<sup>5</sup>. The monarch is addressed by the title of 'Her Majesty' (as are a Queen Consort and a Queen Dowager)<sup>6</sup>. Elizabeth II and her children are styled and known as the 'House and Family of Windsor' and bear the name of Windsor<sup>7</sup>. The style of 'Emperor' is no longer assumed by the monarch<sup>8</sup>.

The monarch also had title in the right of the Earldom of Dublin<sup>9</sup>, and has title in right of the Duchy of Lancaster by inheritance<sup>10</sup>, and in right of the Duchy of Cornwall, which, however, on the birth of an Heir Apparent shifts to that heir<sup>11</sup>. The titles in right of the Duchy of Lancaster and also of the Duchy of Cornwall, so it seems, merge in that of the monarch<sup>12</sup>.

1 The present title was announced by Proclamation dated 28 May 1953: London Gazette, 28 May 1953. As to the unity and divisibility of the Crown in the Commonwealth see COMMONWEALTH vol 13 (2009) PARA 717 et seq. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 There is nothing explicit in the Union with Scotland Act 1706 art 1, prohibiting the adoption of the numeral 'II': *MacCormick v Lord Advocate* 1953 SC 396. As to the constitutional status of Scotland in the United Kingdom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 51 et seq.

3 The title 'Magna Britanniae' was first assumed by James I in an edict to foreign princes: see Reliquiae Spelmannianae 241.

4 The title 'Dominus Hiberniae' was first assumed by Edward IV, his titles being 'Rex Angliae et Franciae et Dominus Hiberniae.' This was subsequently changed by Henry VIII to 'Rex Angliae et Franciae et Hiberniae': Reliquiae Spelmannianae 241.

5 The title 'Defensor Fidei' (ie 'Defender of the Faith') was conferred by Pope Leo X upon Henry VIII as a reward for Henry's book against Luther. The title was subsequently confirmed by Pope Clement VII, withdrawn when Henry VIII was deposed by papal bull, and confirmed by 35 Hen 8 c 3 (King's Style) (1543-4) (repealed). Some writers have suggested that the title was used before Henry VIII: see Oldmixon *History of England* (1739 Edn) pp 35-36; Reliquiae Spelmannianae 241. For the bull conferring the title see Lord Herbert *Life and Reign of Henry VIII* (1741 Edn) p 95.

6 For usage of the style 'Her Royal Highness' see PARA 34 ante. As to the Queen Consort see PARA 29 ante; and as to the Queen Dowager see PARA 32 ante.

7 See the declaration made by the Queen in Council on 9 April 1952: London Gazette, 11 April 1952 p 2013. Descendants of Elizabeth II, other than those enjoying the style, title or attribute of 'Royal Highness' and the titular dignity of Prince or Princess and female descendants who marry and their descendants, bear the name Mountbatten-Windsor: declaration made by the Queen in Council on 8 February 1960, Supplement to London Gazette, 5 February 1960 p 1003.

8 The monarch is no longer styled Emperor of India: Indian Independence Act 1947 s 7(2). Use has been made in some statutes of terms such as 'Imperial', 'Imperial Crown', 'Empire' without the intention of referring specifically to the British Empire or the Emperor of India: see eg the Ecclesiastical Appeals Act 1532, preamble (repealed); and the Union with Ireland Act 1800 art 1 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 67 et seq). As early as the tenth century Athelstan claimed to be Basileus Imperator of the Imperium Britanniae: see Joliffe *Constitutional History of Medieval England* p 102. It seems that Athelstan wished to assert independence of the Emperor, and Henry VIII of the Pope.

9 Queen Victoria conferred this title by letters patent in 1849 upon Edward VII, then Prince of Wales, and his heirs, 'Kings of Great Britain and Ireland': London Gazette, 11 September 1849. All his honours by patent were merged in the Crown on his accession to the throne on 22 January 1901.

10 As to the Duchy of Lancaster see CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq.

11 As to the Duchy of Cornwall see CROWN PROPERTY vol 12(1) (Reissue) PARA 318 et seq.

12 *Duchy of Lancaster Case* (1561) 1 Plowd 212. See also the report of this case in Jenk 224 (the duke's title merges in that of the monarch).

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/4. ROYAL TITLES AND INSIGNIA/40. Legal authority for changes in the style and titles of the monarch.

**40. Legal authority for changes in the style and titles of the monarch.**

Alterations to the royal style and titles are made under statutory authority by proclamation<sup>1</sup>. Each member of the Commonwealth within Her Majesty's dominions uses for its own purposes a form of style and title which suits its particular circumstances while retaining, by convention, a substantial element common to all<sup>2</sup>. The assent of the United Kingdom Parliament has been given to the adoption by Her Majesty of such style and titles as Her Majesty thinks fit, for use in relation to the United Kingdom and all other territories for whose foreign relations Parliament is responsible<sup>3</sup>.

1 Royal Titles Act 1953 s 1. Although statutes before 1953 had enabled the royal style and title to be changed by proclamation (see the Union with Ireland Act 1800 art 1; the Royal Titles Act 1901 (repealed); the Royal and Parliamentary Titles Act 1927 s 1 (repealed); the Indian Independence Act 1947 s 7(2)), additions have also been made without statutory authority (see PARA 39 notes 4-5 ante). As to the confirmation by Parliament of the title 'Defender of the Faith' in the reign of Henry VIII see PARA 39 note 5 ante. As to status of Northern Ireland see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 67 et seq.

2 See *Title of the Sovereign* (Cmd 8748) (1953); and the Royal Titles Act 1953, preamble. As to Elizabeth II's style and titles in her overseas dominions see COMMONWEALTH vol 13 (2009) PARA 716.

3 Royal Titles Act 1953 s 1. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/4. ROYAL TITLES AND INSIGNIA/41. The Royal Standard.

#### **41. The Royal Standard.**

The Royal Standard is the personal flag of the monarch, and cannot be flown without Her Majesty's permission, which is only granted when the monarch is present<sup>1</sup>. The composition of the Royal Standard is the same as the shield in the Royal Arms<sup>2</sup>.

The Royal Standard flies at whatever residence the monarch occupies. The Royal Standard does not fly at Buckingham Palace, the official residence of the monarch in London, during the monarch's absence. Formerly, no flag was flown at Buckingham Palace during the monarch's absence, but since 1997 the Union flag<sup>3</sup> has been flown<sup>4</sup>.

1 Cf the statement of the Earl of Crewe in the House of Lords in 1908 (192 HL Official Report (4th series), col 579).

2 See PARA 43 post.

3 See PARA 42 post.

4 After the death of Diana, Princess of Wales on 31 August 1997, it was decided that the Union flag may fly at half-mast at Buckingham Palace following the death of a senior member of the royal family. When the monarch is in residence at Buckingham Palace the Royal Standard always flies at full mast, even upon the death of the monarch (thus signifying the continuation of the monarchy). See further PARA 42 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/4. ROYAL TITLES AND INSIGNIA/42. The Union flag.

## **42. The Union flag.**

The Union flag, commonly known as the Union Jack<sup>1</sup>, which is directed to be used in all Her Majesty's flags, banners, standards and ensigns, both at sea and on land<sup>2</sup>, combines the national flags of England, Scotland and Ireland<sup>3</sup>. It may be flown on land by every citizen of the Commonwealth, as well as on government buildings<sup>4</sup>.

1 A jack is a small flag flown from the jack-staff at the bow of a vessel, indicating nationality. The name 'Union Jack' is thus strictly incorrect when the flag is not flown for this purpose.

2 Union with Scotland Act 1706 art 1. Until the union with Ireland, the Union flag was formed by combining the cross of St George and the saltire of St Andrew.

3 Eg azure, the crosses saltire of St Andrew and St Patrick quarterly per saltire, countercharged argent and gules; the latter fimbriated of the second, surmounted by the cross of St George of the third, fimbriated as the saltire: Proclamation dated 1 January 1801 (see SR & O Rev 1948 II p 789), under the authority of the Union with Ireland Act 1800 art 1. As to the constitutional status of Scotland in the United Kingdom see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 51 et seq; as to status of Northern Ireland see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 67 et seq. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 See the Earl of Crewe's answer to a question in the House of Lords in 1908 (192 HL Official Report (4th series), cols 579-580).

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/4. ROYAL TITLES AND INSIGNIA/43. The Royal Arms.

### **43. The Royal Arms.**

The Royal Arms, or ensigns armorial, represent the official insignia of the person of the monarch in whom is vested the supreme constitutional authority of the United Kingdom<sup>1</sup>. They are borne by the person who is the monarch and are not hereditary per se.

The Royal Arms are, in heraldic terms, quarterly, the first and fourth being the arms of England<sup>2</sup>, the second of Scotland<sup>3</sup>, and the third of Ireland<sup>4</sup>. The Arms are encircled by the garter, bearing the words 'Honi soit qui mal y pense', have a crest<sup>5</sup> and supporters<sup>6</sup>, and include the motto 'Dieu et mon droit'.

1 For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 Eg gules, three lions passant guardant in pale, or.

3 Eg or, a lion rampant within a double tressure flory counter-flory, gules.

4 Eg azure, a harp or, stringed argent: Proclamation dated 1 January 1801 (amended by Proclamation dated 26 July 1837; SR & O Rev 1948 II 789, 795), issued under the authority of the Union with Ireland Act 1800 art I, which empowered the Crown to appoint by proclamation the ensigns armorial and the flags and banners of the United Kingdom and the dependencies thereto belonging. By the first proclamation the fleur-de-lis of France quartered by Edward III (azure, three fleurs-de-lis or) were omitted, and the escutcheon representing the arms of Hanover was to be ensigned with the Electoral bonnet. In 1816 George III assumed the title of King of Hanover, and the bonnet was replaced by the Crown. On the accession of Queen Victoria, the Duke of Cumberland became King of Hanover, and the arms of Hanover were directed to be omitted from the royal arms by the Proclamation dated 26 July 1837. As to status of Northern Ireland see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 67 et seq.

5 Eg upon the royal helmet the Crown proper, thereon a lion statant guardant or, royally crowned, also proper.

6 Eg on the dexter a lion guardant or, crowned as the crest; and on the sinister a unicorn argent, armed, crined and unguled or, and gorged with a coronet of crosses patée and fleurs-de-lis, a chain affixed thereto passing between the forelegs and reflexed over the back, or.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/4. ROYAL TITLES AND INSIGNIA/44. Licence to use the Royal Arms.

#### **44. Licence to use the Royal Arms.**

Licences may be granted by the Crown to use the Royal Arms<sup>1</sup>. The grant of an old patent<sup>2</sup> is not deemed to authorise the patentee to use the Royal Arms, or to place the Royal Arms on any patented article<sup>3</sup>. If, however, the Royal Arms are sought to be displayed in a church to signify the royal supremacy, a faculty may be granted without the consent of the Crown being signified<sup>4</sup>.

1 There is a saving for the prerogative in this respect in the Patents Act 1949: see s 102(1).

2 Ie a patent under the Patents Act 1949: see PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARAS 302, 304.

3 Ibid s 92(1).

4 *Re West Tarring Parish Church* [1954] 2 All ER 591, [1954] 1 WLR 923n; *Re St Paul, Battersea* [1954] 2 All ER 595, [1954] 1 WLR 920.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/4. ROYAL TITLES AND INSIGNIA/45. Sea and air ensigns.

#### **45. Sea and air ensigns.**

The white, blue and red ensigns are maritime flags<sup>1</sup>. The white ensign consists of the cross of St George, with a Union flag described in a canton in the upper corner next to the staff. The blue and red ensigns are blue and red flags, respectively, with a Union flag placed as in the white ensign. Every British ship is entitled to fly the red ensign, without any defacement or modification<sup>2</sup>. If any distinctive colours, except:

- 19 (1) the red ensign or the Union flag with a white border<sup>3</sup>;
- 20 (2) any authorised or confirmed colours<sup>4</sup>;
- 21 (3) any colours usually worn by Her Majesty's ships or resembling those of Her Majesty; or
- 22 (4) the pendant usually carried by Her Majesty's ships or any patent resembling that pendant,

are hoisted on board any British ship without warrant from Her Majesty or from the Secretary of State for Defence, the master of the ship, or the owner of the ship (if on board), and every other person hoisting the colours or pendant is guilty of an offence<sup>5</sup>.

The civil air ensign<sup>6</sup> is of light blue, a dark blue cross edged with white, in the first quarter the Union flag. Former restrictions on its use have been revoked and not replaced<sup>7</sup>.

The Royal Air Force ensign<sup>8</sup> is of light blue, in the dexter canon the Union, in the centre of the flag three roundels, superimposed red upon white upon blue. The ensign is flown daily at all permanent air force stations at home and abroad<sup>9</sup>.

1 By Order in Council dated 9 July 1864 (see note in the current Index to Government Orders under head 'Armorial Bearings, Ensigns and Flags'), the classification of Her Majesty's ships under the denomination of the red, white and blue squadrons was discontinued, and it was directed that in future the white ensign should be used by all Her Majesty's ships in commission, the blue ensign by merchant ships commanded by officers of the Royal Naval Reserve with permission of the Admiralty, and the red ensign by all other ships belonging to Her Majesty's subjects. Apart from its use in connection with the Royal Naval Reserve, the blue ensign is exclusively the flag of the public service other than the Royal Navy. As to the use of the white ensign see ARMED FORCES.

2 Merchant Shipping Act 1995 s 2(1). Section 2(1) does not apply to government ships (s 2(2)) and the following are also proper national colours, eg (1) any colours allowed to be worn in pursuance of a warrant from Her Majesty or from the Secretary of State for Defence (s 2(3)(a)); (2) in the case of British ships registered in a relevant British possession, any colours consisting of the red ensign defaced or modified whose adoption for ships registered in that possession is authorised or confirmed by Her Majesty by Order in Council which must be laid before Parliament after being made (s 2(3)(b), (4)). As to the occasions on which the proper national colours must be hoisted and the penalty for default see s 3. See generally SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1114.

3 This is a signal for pilots. As to the Union flag see PARA 42 ante.

4 See note 2 head (2) supra.

5 Merchant Shipping 1995 Act s 4(1). A person guilty of this offence is liable on summary conviction to a fine not exceeding the statutory maximum; or on conviction on indictment to a fine: s 4(2). The 'statutory maximum' is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended) and, as from 1 October 1992, is £5,000: s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)).

6 Civil Air Ensign Order 1937 dated 18 March 1937.

7 See the Air Navigation Order 1949, SI 1949/349, art 57 (revoked).

8 Order in Council dated 24 March 1921.

9 See the Queen's Regulations for the Royal Air Force para 165.

## **UPDATE**

### **45 Sea and air ensigns**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(1) THE PREROGATIVE/46. Supremacy of the monarch.

## 5. THE MONARCH AND THE ROYAL PREROGATIVE

### (1) THE PREROGATIVE

#### 46. Supremacy of the monarch.

According to Blackstone, the law of the constitution clothes the person of the monarch with supreme sovereignty and pre-eminence<sup>1</sup>. Moreover, the rights, privileges, immunities and other legal attributes that make up the royal prerogative<sup>2</sup> are derived from ancient custom and the common law<sup>3</sup>. However, the monarch is bound by the terms of the coronation oath and the maxims of the common law to observe and obey the law<sup>4</sup>.

The 1688 settlement and the Bill of Rights (1688 or 1689) established the supremacy of parliamentary statutes over the prerogatives of the monarch<sup>5</sup>. The monarch's exercise of her executive prerogative powers in the modern constitution are regulated by conventions and the principles of ministerial responsibility<sup>6</sup>.

1 1 BI Com (14th Edn) 241. This statement can be reconciled with the realities of the modern constitution only if it is understood that the monarch can lawfully and constitutionally act only in certain ways: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 14. Blackstone's enunciation of the monarch's sovereignty and pre-eminence is in fact the basis of the corollaries expressed, with qualifications, in para 47 post.

2 See PARA 7 ante.

3 See Anson *The Law and Custom of the Constitution* vol II, The Crown (4th Edn, 1935).

4 As to coronation and the oath see PARA 18 et seq ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 28. As to the common law see Bracton, lib I, c 8; 1 BI Com (14th Edn) 241-242; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 14.

5 As to the prerogative see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 367 et seq.

6 See Marshall *Constitutional Conventions* (1987); para 1 et seq ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 19 et seq.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(2) THE PERSONAL IMMUNITIES OF THE MONARCH/47. Monarch's person inviolable.

## **(2) THE PERSONAL IMMUNITIES OF THE MONARCH**

### **47. Monarch's person inviolable.**

As befitting the person of the Head of State, the monarch's person is regarded as inviolable<sup>1</sup>. Moreover, the person of the monarch is immune from all suits and actions at law, either civil or criminal<sup>2</sup>; and the monarch is only bound by legislation by express mention or clear implication<sup>3</sup>.

1 Thus treason still embraces the offence of compassing, imagining, orienting, devising or intending the death, wounding or restraint of the monarch: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 363. Formerly it was declared by statute to be the undoubted and fundamental law of the kingdom that no person whatsoever, including Parliament, ever had, has or ought to have any coercive power over the persons of the monarchs of the realm (12 Car 2 c 30 (Attainder of Regicides) (1660) (repealed)); and it has been stated that 'by law the person of the king is sacred ... for no jurisdiction upon earth has power to try him in a criminal way; much less to condemn him to punishment': 1 Bl Com (14th Edn) 242. Cf the trial and execution of Charles I.

2 Cf para 56 post; and see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 103.

3 Besides applying to the monarch personally, this rule also carries over to the Crown generally: see *Thomas v Pritchard* [1903] 1 KB 209, DC; *BBC v Johns* [1965] Ch 32 at 59, 60, [1964] 1 All ER 923 at 929, 930, CA, per Willmer LJ. See also STATUTES vol 44(1) (Reissue) PARA 1321.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(2) THE PERSONAL IMMUNITIES OF THE MONARCH/48. The monarch can do no wrong.

#### **48. The monarch can do no wrong.**

The law clothes the monarch's person with absolute perfection<sup>1</sup>; hence the common law maxim that 'the King can do no wrong'<sup>2</sup>, and no remedy lies against the monarch in person either in civil or criminal matters<sup>3</sup>, for the prerogative is created for the benefit of the people and cannot be exerted to their prejudice<sup>4</sup>.

The monarch is regarded in law as being incapable of thinking wrong or meaning to do an improper act<sup>5</sup>. Hence, when royal grants are void as being against law, or invalid for some latent or other defect, the law holds them void on the ground that the monarch is 'deceived in her grant', rather than that her personal majesty should be lessened by the imputation of intentional wrong<sup>6</sup>.

In pursuance of the same principle of perfection, no laches or negligence can be attributed to the monarch at common law, and no delay will bar her right, the maxim of law being that 'time does not run against the King'<sup>7</sup>. In certain cases, however, the Crown is limited by statute as to the time within which proceedings may be begun<sup>8</sup>.

1 1 BI Com (14th Edn) 245. This generalisation no longer carries conviction and can now serve only as a historical basis for the various privileges described. They now stand on their own feet, and it is probable that the Crown now has to invoke a specific privilege rather than the general characterisation of the monarch.

2 1 BI Com (14th Edn) 245. This rule no longer applies in relation to governmental liability: see *Re M*[1994] 1 AC 377, sub nom *M v Home Office* [1993] 3 All ER 537, HL; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 382. A potential effect of the maxim is that, in order to avoid making the monarch personally accountable, the participation of ministers or other servants of the Crown are required in most public acts, so that they may be accountable: de Smith *Constitutional and Administrative Law* (2nd Edn) p 123 et seq. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 352.

3 As to civil proceedings against the monarch in her private capacity see PARA 56 post.

4 *Nichols v Nichols* (1576) 2 Plowd 477 at 487.

5 1 BI Com (14th Edn) 246.

6 As to when grants are void for deceit see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 864.

7 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 390.

8 As to the limitation of actions by and against the Crown see LIMITATION PERIODS vol 68 (2008) PARA 903.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(2) THE PERSONAL IMMUNITIES OF THE MONARCH/49. Monarch not bound by custom.

#### **49. Monarch not bound by custom.**

Under the general rule at common law, no custom<sup>1</sup> which goes to the person or goods binds the monarch<sup>2</sup>; therefore, she is not subject to toll<sup>3</sup> or pontage and passage<sup>4</sup>, nor is her personal property subject to many of the laws which are applicable in the case of a citizen<sup>5</sup>. As the monarch may take advantage of statutes although not bound<sup>6</sup>, so also, it seems, she may take advantage of custom. Franchises may be claimed against the Crown by prescription<sup>7</sup>.

1 Custom differs from common law as being applicable to particular persons or districts, whilst the latter is universally applicable: see CUSTOM AND USAGE.

2 Vin Abr, Prerogative, T (2); *Anon* (1457) Jenk 83 (neither time nor place runs against the Crown; therefore the custom of London to hold goods pledged until the loan was repaid did not bind Crown jewels).

3 Vin Abr, Prerogative, T (2). The exemption applies to the monarch's private horses and carriage when being used with permission, even though not in her service: see *Westover v Perkins* (1859) 2 E & E 57.

4 Vin Abr, Prerogative, T (2); *Anon* (1457) Jenk 83; and cf *A-G v Londonderry Bridge Comrs* [1903] 1 IR 389 (Crown servants' free passage over ferries).

5 Eg the law as to wreck, estrays, waifs, sale in market overt and distress: see *Anon* (1457) Jenk 83.

6 See PARA 7 ante.

7 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 879.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(3) THE EXERCISE OF THE ROYAL PREROGATIVE/50. By whom the prerogative is exercisable.

### **(3) THE EXERCISE OF THE ROYAL PREROGATIVE**

#### **50. By whom the prerogative is exercisable.**

The occupancy of the Crown being continuous in the eyes of the law, on the death of the reigning monarch the right to exercise the prerogative vests immediately in the successor<sup>1</sup>. Acts done by the monarch for the time being, or the de facto monarch, whether the rightful heir according to the rules of hereditary descent or not, are good and valid in law, whilst the exercise of the prerogative by the rightful heir out of possession is void and of no legal effect<sup>2</sup>.

1 1 Bl Com (14th Edn) 249. See also PARA 11 ante.

2 Thus, all judicial acts done by Henry VI whilst in possession of the Crown, and all pardons and charters of denization granted by him, were good. But a pardon granted by Edward IV before he obtained possession of the throne was void: 3 Co Inst 7; Bac Abr, Prerogative, A. As to the duty of allegiance to the de facto monarch see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 29. As to treason to the de facto monarch see PARA 6 ante.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(3) THE EXERCISE OF THE ROYAL PREROGATIVE/51. The seals.

### **51. The seals.**

The seal of Great Britain, the privy signet and all other public seals in being at the time of the demise of the reigning monarch, her heirs or successors are to continue and be made use of as the respective seals of the successor, until the latter gives orders to the contrary<sup>1</sup>.

1 Succession to the Crown Act 1707 s 9 (amended by the Statute Law Revision Act 1888). The need to use the privy seal has been abolished: see the Great Seal Act 1884 s 3 (repealed); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 914. As to the Great Seal see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 909 et seq. As to the sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 908, 912; and as to its use in the case of illness or absence of the monarch see PARA 13 ante.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(4) THE MONARCH AND LEGAL PROCEEDINGS/52. Arrest.

## (4) THE MONARCH AND LEGAL PROCEEDINGS

### 52. Arrest.

The monarch cannot be arrested<sup>1</sup>. This privilege extends, in civil suits, to persons of Her Majesty's household who are liable to be bona fide, substantially and continually employed in waiting or attending on the royal person<sup>2</sup>, unless the Lord Chamberlain gives leave for the arrest<sup>3</sup>.

1 2 Co Inst 50.

2 2 Co Inst 631; 4 Co Inst 24; *Bartlett v Hebbes* (1794) 5 Term Rep 686. Continual service and attendance is necessary to afford exemption: 2 Co Inst 631. The exemption has been held to extend to a junior clerk of the monarch's kitchen (*Bartlett v Hebbes* supra), and to a coachman in ordinary, even though arrested for a debt incurred in carrying on a trade (*King v Foster* (1809) 2 Taunt 167). The privilege is confined to servants in ordinary with fee (*Luntley v Battine* (1818) 2 B & Ald 234 at 237 per Abbott CJ; and see that case at 238-239 note (b)), and does not extend to a nominal officer without fee on a particular occasion (*Luntley v Battine* supra at 237-238), or, it seems, to gentleman of the privy chamber (*Barrington v Venables* (1661) 1 Keb 137, where the court inquired who the counsel was who had pleaded the privilege in order to punish him; but see contra *Luntley v Battine* supra at 238, 240; *R v Moulton* (1666) 2 Keb 3). Actual residence by the monarch at the time within the palace is not necessary: *Winter v Miles* (1809) 10 East 578.

3 See the cases cited in note 2 supra; and Chitty *Law of the Prerogatives of the Crown* p 374. Discharge could formerly be obtained by motion or writ of privilege: *Luntley v Battine* (1818) 2 B & Ald 234. The writ of privilege later became obsolete, and it would seem that discharge should now be sought by motion or possibly by habeas corpus: see *Swan v Dakins* (1855) 24 LJCP 131. As to royal palaces see PARA 53 post; and CROWN PROPERTY vol 12(1) (Reissue) PARA 365.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(4) THE MONARCH AND LEGAL PROCEEDINGS/53. Privilege of royal palaces.

### **53. Privilege of royal palaces.**

No arrest<sup>1</sup> can be made in the monarch's presence or within the verge of a royal palace<sup>2</sup>. No judicial process can be executed within a royal palace which is used, or kept in readiness for use, as a royal residence, even though the monarch is not at the time residing there<sup>3</sup>.

1 See PARA 52 ante.

2 3 Bl Com (14th Edn) 289. An arrest within the verge is not a good ground upon which a prisoner can claim to be discharged; it is for those who have jurisdiction to complain: *Sparks v Spink* (1817) 7 Taunt 311.

3 *Winter v Miles* (1809) 10 East 578; *A-G v Dakin* (1870) LR 4 HL 338. Hampton Court Palace is a royal palace but not a royal residence: *A-G v Dakin* supra. The Palace of Westminster is not within the privilege, having ceased to be a royal residence: *Combe v De la Bere* (1882) 22 ChD 316, CA. When it was a residence its verge extended from Charing Cross to Westminster Hall: 28 Hen 8 c 12 (Palace of Westminster) (1536) (repealed). As to royal palaces see CROWN PROPERTY vol 12(1) (Reissue) PARA 365.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(4) THE MONARCH AND LEGAL PROCEEDINGS/54. Execution and distress.

#### **54. Execution and distress.**

The monarch's goods cannot be taken in execution<sup>1</sup>, nor can a distress be taken on land in her possession<sup>2</sup>; nor may Crown chattels on the land of a subject be taken in execution or for distress<sup>3</sup>. Foreclosure will not be decreed against the Crown<sup>4</sup>.

1 Chitty *Law of the Prerogatives of the Crown* p 376; and see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 135.

2 *Willion v Berkley* (1561) 1 Plowd 223 at 243 (monarch not bound by private customs); *Anon* (1459) Jenk 112.

3 *Secretary of State for War v Wynne* [1905] 2 KB 845. This privilege extends even after distress and sale, and in a proper case damages may be recovered: see *Secretary of State for War v Wynne* supra. See also DISTRESS vol 13 (2007 Reissue) PARA 930.

4 See MORTGAGE vol 77 (2010) PARA 566.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(4) THE MONARCH AND LEGAL PROCEEDINGS/55. Evidence.

## **55. Evidence.**

It has been said that the monarch may not give evidence in her own cause<sup>1</sup>. Whether the monarch's evidence under the sign manual or Great Seal was admissible as to facts within her knowledge has been doubted<sup>2</sup>.

1 2 Hale PC 282; Chitty *Law of the Prerogatives of the Crown* p 377.

2 2 Roll Abr, Trials, Testimonies, H. Such evidence has been admitted: see *Abignye v Clifton* (1611) Hob 213 (as to a certificate under sign manual); *Sir Henry Lea and Henry Lea's Case* (1612) Godb 198 at 199. There is authority to the effect that such evidence may be received in civil cases between third parties: see Chitty *Law of the Prerogatives of the Crown* p 378 note (d). As to seals see PARA 51 ante. As to the sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 908, 912; and as to its use in the case of illness or absence of the monarch see PARA 13 ante.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(4) THE MONARCH AND LEGAL PROCEEDINGS/56. Proceedings against the monarch in private capacity.

## **56. Proceedings against the monarch in private capacity.**

At common law no proceeding, civil or criminal, was maintainable against the monarch in person<sup>1</sup>; the courts were her own and they could have no jurisdiction over the monarch<sup>2</sup>.

However, two of the methods by which redress might formerly be sought against the Crown presumably continue to apply in relation to the monarch in her private capacity<sup>3</sup>. First, if a fiat was granted on the advice of the Attorney General, a petition of right lay in all civil cases arising out of contract or relating to the recovery of land or chattels or compensation in respect of land or chattels<sup>4</sup>, or, indeed, possibly in any case where an action could be brought against a subject<sup>5</sup> except an action arising out of or sounding in tort<sup>6</sup> or arising out of an employer's liability for his servants' acts<sup>7</sup>. Second, if equitable relief was appropriate, the Attorney General, as representing the monarch, might be sued for a declaration which might directly or indirectly affect the monarch's rights<sup>8</sup>.

1 *Wardens and Commonalty of Sadlers' Case* (1588) 4 Co Rep 54b at 55a; Bac Abr, Prerogative, E 1; Bac Abr, Actions, B; 1 Bl Com (14th Edn) 245.

2 1 Bl Com (14th Edn) 242. No lord could be compelled to answer in his own court: see 1 Pollock and Maitland's *History of English Law* (2nd Edn) 518. So far was this reasoning carried that the Crown could not be compelled to become a party to an interpleader issue (*The Mogileff* (1921) 38 TLR 71 (affd [1922] P 122, CA)); but cf now the Crown Proceedings Act 1947 s 16. See further CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 109.

3 Ibid s 40(1). 'Her Majesty in her private capacity' includes Her Majesty in right of the Duchy of Lancaster and includes the Duke of Cornwall: s 38(3).

Before the Crown Proceedings Act 1947, proceedings against government departments could also be brought against a defendant nominated by the Crown; however, this procedure was considered unsatisfactory as the defendant must owe some duty to the plaintiff: *Adams v Naylor* [1946] AC 543, HL; *Royster v Cavey* [1947] KB 204, CA.

4 In *Feather v R* (1865) 6 B & S 257 at 284 (approved in *Anglo-Saxon Petroleum Co v Damant* [1947] KB 794 at 801, [1947] 2 All ER 465 at 469, CA) it was stated that a petition of right was restricted to the matters specified in the text. See, however, the cases cited in note 5 infra, in particular *Kildare County Council v R* [1909] 2 IR 199, which support the view that a petition of right was not so limited.

5 *Viscount Canterbury v A-G* (1843) 4 State Tr NS 767 at 778; *A-G v De Keyser's Royal Hotel Ltd* [1920] AC 508, HL; *Commercial and Estates Co of Egypt v Board of Trade* [1925] 1 KB 271, CA; *Kildare County Council v R* [1909] 2 IR 199 at 232. It is not clear whether proceedings must now be brought by common law or according to the simplified procedure provided by the Petitions of Right Act 1860 (repealed, except in relation to proceedings by or against the monarch in her private capacity, by the Crown Proceedings Act 1947 s 40(1)): see further CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARAS 103, 110.

6 *Viscount Canterbury v A-G* (1843) 4 State Tr NS 767; *Tobin v R* (1864) 16 CBNS 310; *Anglo-Saxon Petroleum Co v Damant* [1947] KB 794, [1947] 2 All ER 465, CA. See also the Crown Proceedings Act 1947 s 40(1); and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARAS 103, 110.

7 See *Bambridge v Postmaster-General* [1906] 1 KB 178, CA.

8 *Dyson v A-G* [1911] 1 KB 410, CA; *Dyson v A-G* [1912] 1 Ch 158, CA. For the power to grant a declaratory order in lieu of injunction or specific performance in a case where the Crown is a party see the Crown Proceedings Act 1947 s 21(1) proviso (a); and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 134.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(5) RESTRICTIONS ON ROYAL GRANTS/57. Prerogatives may not be granted.

## **(5) RESTRICTIONS ON ROYAL GRANTS**

### **57. Prerogatives may not be granted.**

Apart from the franchises which are granted out of the prerogative<sup>1</sup>, the general rule at common law is that the monarch may not grant to another the prerogatives of the Crown<sup>2</sup>. Thus, the monarch cannot grant the right of distributing justice so as to exclude herself<sup>3</sup>. Further, she may not grant prerogatives in connection with public government<sup>4</sup>, such as the right of summoning Parliament<sup>5</sup>, or of assenting to Bills<sup>6</sup>, or the power of making judges and sheriffs<sup>7</sup>, although these powers may be and invariably are delegated to the governors of overseas territories to avoid the inconvenience and delay which would otherwise arise from distance and the absence of the monarch<sup>8</sup>, and the privilege of choosing its own sheriff was sometimes granted to a county corporate<sup>9</sup>. The monarch cannot grant away the right to the Crown by testament<sup>10</sup>. Nor can the right to dig for saltpetre be granted<sup>11</sup>.

1 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 879.

2 Vin Abr, Prerogative, M, b, pl 20; Bro Abr, Prerogative, pl 60.

3 Vin Abr, Prerogative, M, b, pl 20; Bro Abr, Prerogative, pl 60. Although in early times the monarch did in fact create counties palatine and transferred to their rulers full jura regalia to the exclusion of his own writs until such rights with regard to the issue of writs and process were restored to the Crown by statute (see the Jurisdiction in Liberties Act 1535 (repealed)), such instances must be considered as exceptions to the general rule or, perhaps, as acts done before the rule was finally established, rather than precedents to the contrary; and palatinate jurisdictions cannot be granted at the present day without the authority of an Act of Parliament: see 4 Co Inst 204; Bac Abr, Courts Palatinate.

4 Vin Abr, Prerogative, M, b, pl 34.

5 1 Bl Com (14 th Edn) 119.

6 Chitty *Law of the Prerogatives of the Crown* p 74. As to giving the royal assent by commission see PARLIAMENT vol 34 (Reissue) PARA 835; and as to royal assent by governors of overseas territories see COMMONWEALTH vol 13 (2009) PARAS 718 (Commonwealth), 826 et seq (dependent legislatures).

7 Vin Abr, Prerogative, M, b, pl 21.

8 See Vin Abr, Prerogative, M, b, pl 21. As to the powers usually so delegated see COMMONWEALTH vol 13 (2009) PARAS 718 (Commonwealth), 826 et seq (dependent legislatures).

9 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 882; and SHERIFFS.

10 Vin Abr, Prerogative, M, b, pl 21.

11 *King's Prerogative in Saltpetre* (1606) 12 Co Rep 12 at 13.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(5) RESTRICTIONS ON ROYAL GRANTS/58. Personal prerogatives.

## **58. Personal prerogatives.**

The monarch may not transfer such personal prerogatives as the lapse of a church (as this is a trust reposed in the monarch<sup>1</sup>), nor the right to make denizens<sup>2</sup>, or to pardon offences<sup>3</sup>. The monarch may not grant the jewels of the Crown<sup>4</sup>, which are heirlooms and as such do not pass to the executor<sup>5</sup>.

1 Vin Abr, Prerogative, M, b, pl 7.

2 Bac Abr, Prerogative, F, 1; Bro Abr, Patents p1 111.

3 Bac Abr, Prerogative, F, 1. This right may be delegated in cases of necessity arising from distance or the monarch's absence, and is usually delegated to colonial governors. In the United Kingdom it is exercised on the advice of the Home Secretary. As to pardons see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 823 et seq. As to the Home Secretary see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 466. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

4 Vin Abr, Prerogative, M, b, pl 21. But see contra *Lord Hastings v Douglas* (1634) Cro Car 343 at 344 (jewels of the Crown may be granted by letters patent during the monarch's life, but not by testament). As to the jewels of the Crown see CROWN PROPERTY vol 12(1) (Reissue) PARA 374.

5 Co Litt 18b; *Earl of Devonshire's Case* (1607) 11 Co Rep 89a at 92a.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/5. THE MONARCH AND THE ROYAL PREROGATIVE/(5) RESTRICTIONS ON ROYAL GRANTS/59. The prerogative of justice.

### **59. The prerogative of justice.**

In general, the monarch cannot grant anything which is prejudicial to the administration of justice. Thus, the monarch cannot exclude the Crown's right of criminal prosecution<sup>1</sup> or grant commissions to execute any law other than the common law<sup>2</sup>.

The monarch cannot exempt persons from future liability to punishment for offences<sup>3</sup>. Royal grants and promises of fines and forfeitures of particular persons, before conviction, are illegal under the Bill of Rights (1688 or 1689)<sup>4</sup>.

Generally also, a royal grant of the monarch cannot derogate from the public or private rights of the citizen, which are protected by Magna Carta<sup>5</sup>. Royal grants in derogation of rights vested in another through a previous grant are void<sup>6</sup>.

1 Vin Abr, Prerogative, M, b, pl 34.

2 Vin Abr, Prerogative, M, b, pl 3; Bac Abr, Prerogative, F, 1; 2 Co Inst 54.

3 2 Roll Abr 192; Vin Abr, Prerogative, Y, b, pl 1.

4 In the Bill of Rights (1688 or 1689) art 1.

5 See Magna Carta of Edward 1 (1297) c 1; and see generally CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue). As to grants derogatory of the public right of fishing see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 868.

6 *Alcock v Cooke* (1829) 5 Bing 340; *R v Amery* (1788) 2 Term Rep 515 at 569; *Alton Woods' Case* (1600) 1 Co Rep 40b; *Gledstanes v Earl of Sandwich* (1842) 4 Man & G 995; Vin Abr, Prerogative, F, 1.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/6. THE MONARCH AS HEAD OF THE CHURCH OF ENGLAND/60. Head of the Church.

## **6. THE MONARCH AS HEAD OF THE CHURCH OF ENGLAND**

### **60. Head of the Church.**

At common law and by statute the monarch is the only supreme head on earth, under God, of the Church of England<sup>1</sup>, and all spiritual and ecclesiastical jurisdictions, privileges, superiorities and pre-eminentures are united and annexed to the Imperial Crown<sup>2</sup> of the realm<sup>3</sup>.

1 House of Lords Precedence Act 1539 s 2 (amended by the Statute Law Revision Act 1948); Com Dig Prerogative, D 17. The statutory provisions relating to the supremacy of the monarch in spiritual matters were declaratory of the common law: see 26 Hen 8 c 1 (Supremacy of the Crown) (1534) (repealed); 1 Eliz 1 c 1 (Act of Supremacy) (1558-9) s 4 (repealed by the Statute Law (Repeals) Act 1969); *Caudrey's Case* (1591) 5 Co Rep 1a at 8a.

2 See PARA 39 note 8 ante.

3 1 Eliz 1 c 1 (Act of Supremacy) (1558-9) s 8 (amended by the Statute Law Revision Act 1888; and by 16 Car 1 c 11 (1640) s 1 (repealed)). See further ECCLESIASTICAL LAW.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/6. THE MONARCH AS HEAD OF THE CHURCH OF ENGLAND/61. Patronage of the Crown.

## **61. Patronage of the Crown.**

As head of the Church, the monarch is the patron of all archbishoprics and bishoprics in the United Kingdom, and upon a vacancy formally nominates archbishops and bishops to the dean and chapter for election<sup>1</sup>. The monarch is also patron paramount of all benefices in England, and as such is entitled to the right of presentation by lapse to all such as are not regularly filled<sup>2</sup>. The Crown also enjoys the rights of patronage with regard to various churches throughout the United Kingdom<sup>3</sup>.

1 25 Hen 8 c 20 (Appointment of Bishops Act) (1533) ss 3-5 (amended by the Statute Law Revision Act 1888); 21 & 22 Geo 5 No 7 (Cathedrals Measure) (1931) s 23 (repealed). The monarch, in making her nomination, acts upon the advice of the Prime Minister. Since 1976 the practice has been for the Church of England's Crown Appointments Commission to submit to the Prime Minister the names of two persons (ranked in order of preference) who might fill the vacancy. For the meaning of 'United Kingdom' see PARA 1 note 3 ante.

2 Bac Abr, Prerogative, D2. See also ECCLESIASTICAL LAW.

3 The benefices in the gift of the Crown are listed in Crockford's Clerical Directory. As to the exercise of Crown patronage by the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 496.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/6. THE MONARCH AS HEAD OF THE CHURCH OF ENGLAND/62. Convocations and canons.

## **62. Convocations and canons.**

As head of the Church the monarch also convenes, prorogues, and controls the ecclesiastical synods or convocations<sup>1</sup> of Canterbury and York, and her licence and assent is necessary before canons can be enacted by those convocations<sup>2</sup> or by the General Synod<sup>3</sup>. When enacted and promulgated<sup>4</sup>, such canons bind the clergy, but they require the authority of an Act of Parliament before they become binding upon the laity<sup>5</sup>. Such canons as are binding upon the clergy cannot be executed if contrary to common or statute law, the monarch's prerogative or the custom of the realm<sup>6</sup>.

1 See 25 Hen c 19 (Submission of the Clergy Act) (1533) s 1. This enactment was only declaratory of the common law: see *Case of Convocations* (1611) 12 Co Rep 72; and see also 4 Co Inst 322, 323. The convocations may be called together and dissolved at such times as the monarch may determine, without regard to the convening or dissolution of Parliament, or to a demise of the Crown: Church of England Convocations Act 1966 s 1. For the manner in which convocations are convened and prorogued, and their composition, see ECCLESIASTICAL LAW.

2 25 Hen c 19 (Submission of the Clergy Act) (1533) s 1. The monarch's licence is required before convocations can even confer to enact a canon: see *Case of Convocations* (1611) 12 Co Rep 72. However, it is customary for convocation or the General Synod to discuss many matters without the royal licence, and these are subsequently embodied in synodical Acts which have no legal force. See ECCLESIASTICAL LAW.

3 Synodical Government Measure 1969 (No 2) s 1(3)(a), (b).

4 For the procedure on the enactment and promulgation of canons see ECCLESIASTICAL LAW.

5 *Cox's Case* (1700) 1 P Wms 29 at 32; *Middleton v Crofts* (1736) 2 Atk 650; *More v More* (1741) 2 Atk 157. As to the legal effect of canons generally see ECCLESIASTICAL LAW.

6 See 25 Hen c 19 (Submission of the Clergy Act) (1533) s 3; Synodical Government Measure 1969 (No 2) s 1(3)(a), (b); and *Case of Convocations* (1611) 12 Co Rep 72. See also ECCLESIASTICAL LAW.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/6. THE MONARCH AS HEAD OF THE CHURCH OF ENGLAND/63. General Synod measures.

**63. General Synod measures.**

Measures of the General Synod of the Church of England are not binding until they have been laid before Parliament, and, in accordance with a resolution of each House of Parliament, have been presented to the monarch for assent. When that assent has been given they have the force and effect of an Act of Parliament<sup>1</sup>.

<sup>1</sup> Church of England Assembly (Powers) Act 1919 s 4; Synodical Government Measure (No 2) 1969 s 2(1), Sch 2 art 10(1). See ECCLESIASTICAL LAW.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/6. THE MONARCH AS HEAD OF THE CHURCH OF ENGLAND/64. Convocations.

**64. Convocations.**

The monarch calls together and dissolves the General Synod<sup>1</sup>. The convocations of Canterbury and York are not dissolved by the demise of the Crown<sup>2</sup>.

1 Synodical Government Measure (No 2) 1969 s 1(4); Church of England Convocations Act 1966 s 1. See further ECCLESIASTICAL LAW.

2 Church of England Convocations Act 1966 s 1(4). See further ECCLESIASTICAL LAW.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(1) THE PRIVATE PROPERTY OF THE MONARCH/65. Acquisition of land.

## **7. THE MONARCH'S PROPERTY AND FINANCES**

### **(1) THE PRIVATE PROPERTY OF THE MONARCH**

#### **65. Acquisition of land.**

Purchases of land made by the monarch after the assumption of the Crown vest in the monarch as a corporation sole, but purchases made before accession or descents from ancestors after accession vest in the monarch in her natural capacity<sup>1</sup>.

Estates belonging to the monarch in a private capacity are defined by statute, and may be dealt with freely by the monarch<sup>2</sup>. Such statutory private land and hereditaments are, however, subject to taxation<sup>3</sup>.

Estates vested in the monarch in her body politic are subject to statutory restrictions on alienation, and the greater portion are now managed as part of the national revenues<sup>4</sup>. They are not, in general, subject to taxation<sup>5</sup>.

1 Co Litt 15b. At common law the monarch cannot hold land in her natural capacity except in right of the Duchy of Lancaster or an estate tail by 13 Edw 1 (Statute of Westminster the Second) (1285) c 1 (commonly called the statute De Donis Conditionalibus); however, statutory provision has been made for the monarch to hold land in her private capacity: see generally CROWN PROPERTY vol 12(1) (Reissue) PARA 453 et seq.

2 See CROWN PROPERTY vol 12(1) (Reissue) PARA 357 et seq.

3 See the Crown Private Estate Act (1800) ss 6, 7 (both amended by the Statute Law Revision Act 1888); and PARA 80 post.

4 See CROWN PROPERTY vol 12(1) (Reissue) PARA 278 et seq.

5 As to the general Crown exemption from taxation see INCOME TAXATION vol 23(2) (Reissue) PARA 1165; and as to the taxation of Crown private estates see PARA 80 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(1) THE PRIVATE PROPERTY OF THE MONARCH/66. Crown lands.

## **66. Crown lands.**

The land which the monarch enjoys in her political capacity<sup>1</sup> comprises: (1) the demesne land originally belonging to the Crown<sup>2</sup>, or which came to the Crown afterwards by forfeiture or other means<sup>3</sup>; (2) the land and rights relating to land which are enjoyed by virtue of the prerogative, such as foreshore, land formed by alluvion or left bare by diluvion and royal mines<sup>4</sup>; and (3) the land and rights which are acquired by virtue of the prerogatives of escheat and forfeiture<sup>5</sup>.

1 See the *Report of the Committee on Crown Lands* (Cmd 9483) (1955); Pugh *The Crown Estate: an Historical Essay* 1960 (HM Stationery Office).

2 Before the passing of the Crown Lands Act 1702, by which the alienation of Crown land was restrained, the land revenues of the Crown had been greatly impoverished by numerous grants to subjects, especially under William III: see 1 Bl Com (14th Edn) 286. See also CROWN PROPERTY vol 12(1) (Reissue) PARA 205.

3 As to demesne land see 1 Bl Com (14th Edn) 286.

4 As to Crown rights to foreshore see CROWN PROPERTY vol 12(1) (Reissue) PARA 242 et seq; as to alluvion and diluvion see CROWN PROPERTY vol 12(1) (Reissue) PARAS 263-264; as to royal mines see CROWN PROPERTY vol 12(1) (Reissue) PARA 267 et seq.

5 As to escheat see CROWN PROPERTY vol 12(1) (Reissue) PARA 231 et seq. As to forfeiture see REAL PROPERTY vol 39(2) (Reissue) PARA 253.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(1) THE PRIVATE PROPERTY OF THE MONARCH/67. Personal property.

### **67. Personal property.**

All personal estate consisting of money which may be issued or applied for the use of the privy purse, or not appropriated to any public service, or goods, chattels or effects not coming to the monarch in right of the Crown, is or are to be deemed private estate and effects of the monarch subject to disposition by will which, to be legally valid, must be in writing under the sign manual<sup>1</sup>.

Subject to such testamentary disposition, private personality is liable to all debts properly payable out of the privy purse, and subject thereto, and as far as undisposed of, is to go on the demise of the Crown in the same manner as it would have done if the Crown Private Estate Act 1800 had not been passed<sup>2</sup>.

1 See the Crown Private Estate Act 1800 s 10.

2 See *ibid* s 10.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(1) THE PRIVATE PROPERTY OF THE MONARCH/68. The monarch's sources of funding.

## **68. The monarch's sources of funding.**

The sources of funding<sup>1</sup> for Elizabeth II, or officials of the royal household acting on the monarch's behalf, and certain members of the royal family, are: (1) the Civil List<sup>2</sup>, comprising (a) the Queen's Civil List; (b) yearly sums to certain royal widows<sup>3</sup>; and (c) parliamentary annuities towards expenses of duties pertaining to the royal family by those of Their Royal Highnesses for whom Parliament has not made other provision<sup>4</sup>; (2) the grant-in-aid, provided for property services in the occupied palaces<sup>5</sup>; (3) the privy purse<sup>6</sup>; and (4) the Queen's personal income, which is used to meet Her Majesty's private expenditure.

1 See *Report from the Select Committee on the Civil List* (HC paper (1971-72) no 29); and *HM The Queen, Royal Finances* (2nd Edn, 1995).

2 Comprising a form of annual income out of grants made by Parliament from public funds: see PARA 70 et seq post.

3 See PARA 72 post. As to the power to increase these sums see PARA 77 post.

4 See the Civil List Act 1972 s 3 (amended by the Civil List (Increase of Financial Provision) Order , SI 1990/2018, art 8). As to the power to increase these sums see PARA 77 post.

5 In Buckingham Palace, St James's Palace and Clarence House, Marlborough House Mews, the residential, office and general areas of Kensington Palace, Windsor Castle and related areas and buildings, Frogmore House, and Hampton Court Mews and Paddocks. See also CROWN PROPERTY vol 12(1) (Reissue) PARA 365.

6 The privy purse is mainly financed through the net income of the Duchy of Lancaster, and also of the Duchy of Cornwall when not vested in the Prince of Wales. It is used for: (1) official expenditure incurred by the monarch not historically charged to the Civil List; (2) some of the monarch's private expenditure; (3) official expenses and costs of certain members of the royal family; and (4) the royal household. See *HM The Queen, Royal Finances* (2nd Edn, 1995) p 15 et seq; paras 30 ante, 71 note 5 post; and CROWN PROPERTY.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(1) THE PRIVATE PROPERTY OF THE MONARCH/69. Sources of the Crown's revenue.

## **69. Sources of the Crown's revenue.**

Historically, the Crown received income from (1) hereditary revenues<sup>1</sup>; (2) prerogative rights and privileges relating to property enjoyed by the Crown<sup>2</sup>; and (3) taxation<sup>3</sup>. Such revenues have been mainly surrendered to the nation and are now paid into the Consolidated Fund to form part of the public revenue<sup>4</sup>.

1 The hereditary revenues of the Crown are derived principally from such land as is or may become vested in the monarch in her body politic in right of the Crown; and they have, in general, been rendered inalienable except in accordance with statutory provisions: see CROWN PROPERTY vol 12(1) (Reissue) PARA 207.

2 These prerogative rights and privileges are: (1) the right to bona vacantia (see CROWN PROPERTY vol 12(1) (Reissue) PARAS 231 et seq), to wreck (see CROWN PROPERTY vol 12(1) (Reissue) PARAS 270-277; SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1003), to treasure trove (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1084 et seq; CROWN PROPERTY vol 12(1) (Reissue) PARA 373), and to waifs and estrays (see CROWN PROPERTY vol 12(1) (Reissue) PARAS 371-372); (2) the prerogative rights relating to royal fish and swans (see CROWN PROPERTY vol 12(1) (Reissue) PARAS 229-230), royal mines (see CROWN PROPERTY vol 12(1) (Reissue) PARA 218 et seq) and fisheries (see CROWN PROPERTY vol 12(1) (Reissue) PARA 228); (3) the revenues derived from droits of Admiralty (as to Admiralty droits see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 139 et seq; and for the distinction in time of war between Admiralty droits and droits of the Crown see PRIZE), from the courts of justice, and from fines, recognisances, legal fees and forfeitures; and (4) from prerogatives connected with the Church, such as the temporalities of bishoprics during vacancies (as to temporalities of bishoprics see ECCLESIASTICAL LAW). See also CROWN PROPERTY vol 12(1) (Reissue) PARA 216.

3 Revenues derived from taxation, which were formerly settled upon the Crown by statute, have been surrendered to the nation (see the text and note 4 infra) or the statutes by which they were conferred have been repealed, with a saving of the rights of the Crown.

4 See the Civil List Act 1952 s 1; and CROWN PROPERTY vol 12(1) (Reissue) PARA 206 et seq. As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(2) THE CIVIL LIST ARRANGEMENTS/70. Revenue from public funds.

## **(2) THE CIVIL LIST ARRANGEMENTS**

### **70. Revenue from public funds.**

In consideration of the surrender of the hereditary revenues<sup>1</sup> there is to be paid for the Queen's Civil List during the present reign and six months thereafter the yearly sum of £7,900,000<sup>2</sup>, subject to the reductions specified below. This yearly sum is appropriated to the salaries and expenses of Her Majesty's household, the royal bounty, alms and special services, and such expenditure is referred to as 'Civil List expenditure'<sup>3</sup>.

In respect of any period during which the Duke of Cornwall for the time being is a minor<sup>4</sup>, the yearly sum so payable is to be reduced by an amount equal to the net revenues of the Duchy of Cornwall<sup>5</sup> for the year, less one equal ninth part of those revenues, and the net revenues of the duchy up to the amount of this reduction were at Her Majesty's disposal<sup>6</sup>. During any period in which the Duchy of Cornwall is vested in Her Majesty the sum of £7,900,000 is subject to a reduction of an amount equal to all the net revenues of the duchy for the year<sup>7</sup>.

1 See PARA 69 ante; and CROWN PROPERTY vol 12(1) (Reissue) PARA 206 et seq.

2 Civil List Act 1972 s 1(1) (amended by the Civil List (Increase of Financial Provision) Order 1990, SI 1990/2018, art 2). As to the power to increase this sum see PARA 77 post; and as to payment of this sum see PARA 78 post.

3 Civil List Act 1972 s 1(3). As to payment of this sum see PARA 78 post.

4 This situation cannot now arise in the present reign: see PARA 30 ante.

5 For the purposes of the Civil List Act 1952, 'the net revenues of the Duchy of Cornwall' means, in relation to any year, the sum certified in respect of each year by the joint certificate of the auditor of the duchy and the auditor of the Civil List to be the surplus in that year of receipts on revenue account over payments on that account: s 11(1). In determining for these purposes what receipts and payments are to be taken to be receipts and payments on revenue account, the two auditors are to follow the ordinary practice of the duchy and must include in their certificate a statement that they have complied with these provisions: s 11(2).

6 Ibid s 2(2) (amended by the Family Law Reform Act 1969 s 10(a), (b); the Civil List Act 1972 s 1(9)). As to payment of this sum see PARA 78 post.

7 Civil List Act 1952 s 2(3) (amended by the Civil List Act 1972 s 1(9)). As to payment of this sum see PARA 78 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(2) THE CIVIL LIST ARRANGEMENTS/71. Application of the monarch's Civil List payments.

### **71. Application of the monarch's Civil List payments.**

If, as respects any calendar year, the sum payable for the Queen's Civil List exceeds the audited Civil List expenditure, an amount equal to the excess is to be paid to the Royal Trustees<sup>1</sup> out of the appropriation to Civil List expenditure, to be accumulated by them and applied according to statutory provisions<sup>2</sup>; and if, as respects any calendar year, the sum payable for the Queen's Civil List is less than the audited Civil List expenditure, the Royal Trustees must make good the deficiency by applying money available by virtue of statute<sup>3</sup>. Any money so available which is not applied in accordance with statute must be dealt with after the present reign in such manner as Parliament may hereafter determine<sup>4</sup>.

1 The Royal Trustees are the persons who are for the time being the First Commissioner of Her Majesty's Treasury, the Chancellor of the Exchequer and the Keeper of Her Majesty's Privy Purse; they are a body corporate by that name and any act of the trustees may be signified under the hands and seals of the trustees for the time being: Civil List Act 1952 s 10; Civil List Act 1972 s 8(2).

2 Ibid s 1(4). If, before the Civil List expenditure for any year has been audited, it appears to the Treasury that a payment will fall to be made under s 1(4) for the year, the Treasury may make a payment before the audit, and such adjustment can be made after the audit as may in the circumstances of the case be required: s 1(5). As to payment of this sum see PARA 78 post; and as to audit see PARA 79 post.

3 Ibid s 1(6). As to the moneys available to make good any deficiencies in the Queen's Civil List see the text to note 2 supra; and PARAS 73, 78 post.

The Royal Trustees may at the request of the Treasury make out of money so available advances towards meeting Civil List expenditure before that expenditure has been audited, and where advances have been so made such adjustment must be made after the audit as may in the circumstances of the case appear to the Treasury to be required: s 1(7).

4 Ibid s 1(8).

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(2) THE CIVIL LIST ARRANGEMENTS/72. Provisions for other members of the royal family.

## **72. Provisions for other members of the royal family.**

Provision is made for other members of the royal family either by payment of an annuity<sup>1</sup> or by payment of an annual sum to the Royal Trustees. However, since 1 April 1993, the monarch has by agreement repaid the annuities and contributions made to members of the royal family, with the exception of those sums paid to Queen Elizabeth the Queen Mother, Prince Philip and herself<sup>2</sup>.

Queen Elizabeth the Queen Mother receives an annuity of £643,000<sup>3</sup>, the Duke of Edinburgh an annuity of £359,000<sup>4</sup>, and Princess Margaret an annuity of £219,000<sup>5</sup>.

The Royal Trustees are to be paid as a provision for the benefit of the children of Her present Majesty, other than the Duke of Cornwall for the time being, yearly sums of varying amounts<sup>6</sup>. The Royal Trustees are to hold the yearly sums paid to them in trust for all or any one or more of the children of Her present Majesty, other than the Duke of Cornwall for the time being, in such shares and subject to such conditions and powers of revocation (including, if it is thought fit, a condition against alienation) as Her Majesty may by order appoint<sup>7</sup>.

If, during the present reign, the Duke of Cornwall for the time being dies leaving a widow, there will be paid to her during her life the yearly sum of £60,000, to commence from the date of his death<sup>8</sup>. In the event of a son of Her present Majesty, other than the Duke of Cornwall for the time being, dying leaving a widow there will be paid to her during her life the yearly sum of £20,000<sup>9</sup>. In the event of Her Royal Highness, the Duchess of Gloucester surviving His Royal Highness, Duke of Gloucester<sup>10</sup>, there will be paid to her during her life the yearly sum of £87,000<sup>11</sup>.

1 All or part of these annuities are treated as admissible expenses in respect of public duties, and therefore are not taxable: *Report from the Select Committee on the Civil List* (HC Paper (1971-72) no 29), App 12 to the Minutes of Evidence paras 7-9.

2 See 218 HC Official Report (6th Series), 11 February 1993, col 1114. As to the Royal Trustees see PARAS 71 note 1 ante, 78 post.

3 Civil List Act 1937 s 3 (amended by the Civil List Act 1972 s 2(1); and the Civil List (Increase of Financial Provision) Order , SI 1990/2018, art 3). As to the power to increase this sum see PARA 77 post; and as to payment of this sum see PARA 78 post.

4 Civil List Act 1952 s 3 (amended by the Civil List Act 1972 s 2(3); and the Civil List (Increase of Financial Provision) Order 1990, SI 1990/2018, art 3). As to payment of this sum see PARA 78 post.

5 This annuity is payable under two statutory provisions: (1) £213,00 under the Civil List Act 1952 s 5 (amended by the Civil List Act 1972 s 2(5); and the Civil List (Increase of Financial Provision) Order 1990, SI 1990/2018, art 6)); and (2) £6,000 under the Civil List Act 1937 s 6. As to the power to increase the sum payable under the Civil List Act 1952 see PARA 77 post; and as to payment of this sum see PARA 78 post. See also the text and note 2 supra.

6 The annuities paid are as follows: (1) in respect of each such child who either attains the age of 18 years or marries, the sum is £96,000 in the case of a son and £15,000 in the case of a daughter (Civil List Act 1952 s 4(1)(a) (amended by the Family Law Reform Act 1969 s 10(2); the Civil List Act 1972 s 2(4); and the Civil List (Increase of Financial Provision) Order 1990, SI 1990/2018, art 5)); and (2) further yearly amounts in respect of each such child who marries, £45,000 in the case of a son, together with, in the case of His Royal Highness the Duke of York, a supplemental sum of £108,000, and £213,000 in the case of a daughter (Civil List Act 1952 s 4(1)(b) (amended by the Civil List (Increase of Financial Provision) Order 1990, SI 1990/2018, art 5)). Payment commences from the date of his or her attaining that age or marrying (whichever is the earlier) in the case of a

sum falling within head (1) supra and from the date of his or her marrying in the case of a sum falling within head (2) supra; provided that the sum payable in respect of any such son or daughter will cease to be paid on the death of that son or daughter: Civil List Act 1952 s 4(1) (amended by the Family Law Reform Act 1969 s 10(2); the Civil List Act 1972 s 2(4); and the Civil List (Increase of Financial Provision) Order 1990, SI 1990/2018, art 5). As to the power to increase the sums payable see PARA 77 post; and as to payment of these sums see PARA 78 post. See also the text and note 2 supra.

7 Civil List Act 1952 s 4(2). The order must be countersigned by the First Commissioner of Her Majesty's Treasury and the Chancellor of the Exchequer; and any such appointment may be varied by an order similarly made and countersigned: see s 4(2). As to the Royal Trustees see PARA 71 note 1 ante; as to the power to increase the sums payable see PARA 77 post; and as to payment of these sums see PARA 78 post. See also the text and note 2 supra.

8 See the Civil List Act 1952 s 6 (amended by the Civil List Act 1972 s 2(6)). As to the power to increase the sum payable see PARA 77 post; and as to payment of this sum see PARA 78 post. See also the text and note 2 supra.

9 Civil List Act 1972 s 2(8). As to the power to increase the sum payable see PARA 77 post; and as to payment of this sum see PARA 78 post. See also the text and note 2 supra.

10 Sir Prince Henry, the third son of George V, who died in 1974.

11 Civil List Act 1972 s 2(7) (amended by the Civil List (Increase of Financial Provision) Order 1990, SI 1990/2018, art 7). As to the power to increase the sum payable see PARA 77 post; and as to payment of this sum see PARA 78 post. See also the text and note 2 supra.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(2) THE CIVIL LIST ARRANGEMENTS/73. Supplementary provision.

### **73. Supplementary provision.**

For the purposes specified below, the Royal Trustees<sup>1</sup> are to be paid the yearly sum of £636,000<sup>2</sup>. That yearly sum is available for making contributions towards expenses of the performance of duties pertaining to the royal family by those of Their Royal Highnesses for whom Parliament has not made other provision<sup>3</sup>. If, as respects any calendar year, the sum payable under this provision exceeds the contributions made, the excess is to be accumulated by the Royal Trustees and applied<sup>4</sup> towards making good any deficiency in the Queen's Civil List<sup>5</sup>, subject, as respects sums so payable to the Royal Trustees for any period after the end of the present reign, to such provision as Parliament may hereafter determine<sup>6</sup>.

Since 1 April 1993, however, the monarch has by agreement repaid the contributions made to members of the royal family by virtue of these provisions<sup>7</sup>.

1 As to the Royal Trustees see PARA 71 note 1 ante.

2 Civil List Act 1972 s 3(1) (amended by the Civil List (Increase of Financial Provision) Order 1990, SI 1990/2018, art 8). The yearly sum may be increased in accordance with the provisions of the Civil List Act 1972 s 3(2): see further PARA 77 post. As to payment of this sum see PARA 78 post.

3 Ibid s 3(3). As to the provision made for other members of the royal family see PARA 72 ante.

4 Ie in accordance with ibid s 1 (as amended): see PARA 71 ante.

5 See ibid s 3(4).

6 See ibid s 3(5).

7 See PARA 72 text and note 2 ante.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(2) THE CIVIL LIST ARRANGEMENTS/74. Retired allowances.

**74. Retired allowances.**

The Treasury may undertake the payment of any retired allowances granted, on scales and in accordance with conditions approved by from time to time by the Treasury, to or in respect of persons who have been members of the royal household<sup>1</sup>.

1 See the Civil List Act 1937 s 11; and the Civil List Act 1952 s 7(1), (2) (s 7(1) substituted by the Civil List Act 1972 s 4(2)). Retired allowances paid under the Civil List Act 1952 s 7(1) (as so substituted) may take account of previous employment, and sums may be granted in order to enhance superannuation benefits to be derived from later employment: see s 7(1) (as so substituted). As to payment of these sums see PARA 78 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(2) THE CIVIL LIST ARRANGEMENTS/75. Civil List pensions.

### **75. Civil List pensions.**

Acting upon the advice of its responsible advisers, the Crown is empowered to grant Civil List pensions up to a total of £15,000 a year to those persons who have just claims upon the royal beneficence or who, by their personal services to the Crown or by the performance of duties to the public or by their useful discoveries in science and attainments in literature and the arts, have merited the gracious consideration of their monarch and the gratitude of their country<sup>1</sup>.

1 See the Civil List Act 1837 ss 5, 6 (amended by the Statute Law Revision (No 2) Act 1890; the Civil List Act 1952 s 13(1); the Civil List Act 1972 s 4(1); and the Civil List (Increase of Financial Provision) Order 1990, SI 1990/2018, art 9). The Civil List Act 1837 ss 5, 6 (as so amended) continue to apply during the present reign and for a period of six months afterwards, with modifications: Civil List Act 1952 s 13(1) (amended by the Civil List Act 1972 ss 4(1), 8, Schedule). These pensions are not to be granted as chargeable on the sum paid for the Civil List: Civil List Act 1952 s 13(1). A list of the pensions granted in each year ending 31 March must be laid before Parliament within 30 days after that date if Parliament is then sitting or, if not, then within 30 days after the next meeting of Parliament: Civil List Act 1837 s 6 (as amended); Civil List Act 1952 s 13(1) proviso. See also PARA 77 post. As to payment of these sums see PARA 78 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(2) THE CIVIL LIST ARRANGEMENTS/76. Periodical financial reports.

## **76. Periodical financial reports.**

The Royal Trustees<sup>1</sup> must keep under review the yearly amounts of Civil List expenditure, and the sums available to meet that expenditure<sup>2</sup>. A report may be made at any time, the first such report having been required not later than 1 January 1982, and subsequent such reports must, until the end of the present reign, be made at intervals of not more than ten years<sup>3</sup>. The Royal Trustees must also keep under review the other amounts which can be increased in accordance with the relevant statutory provisions<sup>4</sup>, and any related matters, and they may, in a report on Civil List expenditure, or in a separate report, give any information on those matters<sup>5</sup>. The Treasury must lay a copy of any report before the House of Commons<sup>6</sup>.

1 As to the Royal Trustees see PARA 71 note 1 ante.

2 Civil List Act 1972 s 5(1).

3 See ibid s 5(2)(a).

4 Ie in accordance with ibid ss 6-8 (as amended): see PARA 77 post.

5 Ibid s 5(3).

6 Ibid s 5(4).

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(2) THE CIVIL LIST ARRANGEMENTS/77. Increase of financial provision.

### **77. Increase of financial provision.**

The Treasury may from time to time by order increase all or any of the specified sums mentioned in the Civil List Acts<sup>1</sup>. Such an order may be made so as to take effect from the beginning of the calendar year in which it is made<sup>2</sup> and may contain such supplemental provisions, including provisions for the consequential amendment of certain enactments<sup>3</sup>, as may appear to the Treasury to be necessary or expedient<sup>4</sup>. In exercising the powers so conferred, the Treasury must take account of the information afforded by any report made by the Royal Trustees<sup>5</sup>.

The Treasury may, out of moneys provided by Parliament, make payments to the Royal Trustees to be applied by them in supplementing all or any of the sums payable<sup>6</sup> as mentioned above<sup>7</sup>.

1 See the Civil List Act 1972 s 6(1). The specified sums are: (1) the yearly sum mentioned in the Civil List Act 1972 s 1(1) (as amended) (see PARA 70 ante); (2) the sums mentioned in the Civil List Act 1837 s 5 (as amended) (see PARA 75 ante); the Civil List Act 1937 s 3 (as amended) (see PARA 72 ante); and the Civil List Act 1952 ss 3-6 (as amended) (see PARA 72 ante); and (3) the yearly sums mentioned in the Civil List Act 1972 ss 2(7), (8), 3(1) (see PARAS 72-73 ante): s 6(1)(a)-(c) (amended by the Statute Law (Repeals) Act 1977). As to payment of these sums see PARA 78 post.

2 Civil List Act 1972 s 6(3).

3 Ie amendment of the enactments mentioned in note 1 supra: ibid s 6(4).

4 Ibid s 6(4). The order must be made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons: see s 6(5).

5 Ibid s 6(2). As to the Royal Trustees and their responsibilities see PARA 71 note 1 ante; and as to the Royal Trustee's reports see PARA 76 ante.

6 Ie payable under the enactments mentioned in ibid s 6(1) (as amended): see note 1 supra.

7 Civil List Act 1975 s 1(1). As to payment of these sum see PARA 78 post.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(2) THE CIVIL LIST ARRANGEMENTS/78. Payments to be charged on Consolidated Fund.

### **78. Payments to be charged on Consolidated Fund.**

The sums required under the Civil List Acts<sup>1</sup> must be charged on and paid out of the Consolidated Fund<sup>2</sup> and be paid at such times as the Treasury may direct<sup>3</sup>. In particular, effect must be given to the reductions required by the Civil List Act 1952 to be made in the payments for the Queen's Civil List<sup>4</sup> at such times and in such manner as the Treasury may direct<sup>5</sup>.

Where any of the yearly payments mentioned in the Civil List Acts, or any of the required reductions of the yearly payments for the Queen's Civil List, fall to be made in respect only of part of a year, such adjustments of and in relation to those payments and reductions must be made as may in the circumstances of the case appear to the Treasury to be required<sup>6</sup>.

1 Ie (1) the sums required under the Civil List Act 1937 for the provision for Queen Elizabeth the Queen Mother (see PARA 72 ante) and for the payment of the retired allowances payable thereunder by the Treasury (see PARA 74 ante); (2) the sums required under the Civil List Act 1952 (a) for the payments under s 2 (as amended) for the Queen's Civil List (see PARA 71 ante); (b) for the provision for His Royal Highness the Duke of Edinburgh, for Her Majesty's children other than the Duke of Cornwall for the time being, for Her Royal Highness the Princess Margaret, and, in the event of the death of the Duke of Cornwall for the time being leaving a widow, for his widow (see PARA 72 ante); (c) for the payment of retired allowances payable thereunder by the Treasury (see PARA 74 ante); and (d) for the granting of Civil List pensions, whenever granted (see PARA 75 ante); (3) the sums required for any payments under the Civil List Act 1972 (see PARAS 70, 72-73 ante): see the Civil List Act 1937 s 13 (amended by the Civil List Act 1952 s 13(3), Sch 2; the Statute Law Revision Act 1963; and the Statute Law (Repeals) Act 1977); the Civil List Act 1952 s 8 (amended by the Statute Law Revision Act 1963); and the Civil List Act 1972 s 7.

2 As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711; PARLIAMENT vol 78 (2010) PARA 1028 et seq.

3 See the Civil List Act 1937 s 13 (as amended: see note 1 supra); the Civil List Act 1952 s 8 (as amended: see note 1 supra); and the Civil List Act 1972 s 7.

All payments out of the Civil List revenue are paid clear of all fees and other deductions heretofore charged upon and deducted from such payments: see the Civil List Act 1837 s 14 (amended by the Statute Law Revision (No 2) Act 1888; the Statute Law Revision Act 1963; and the Statute Law Revision Act 1964). However, it seems that this provision does not extend to income tax, in cases where otherwise tax is chargeable; eg Civil List pensions granted under the Civil List Act 1837 are earned income for the purposes of the Income and Corporation Taxes Act 1988 s 833(5)(a): see INCOME TAXATION vol 23(2) (Reissue) PARA 1274.

4 Ie by virtue of the Civil List Act 1952 s 2 (as amended): see PARA 70 ante.

5 Ibid s 8 (as amended: see note 1 supra).

6 See the Civil List Act 1937 s 14 (amended by the Civil List Act 1952 s 13(3), Sch 2); the Civil List Act 1952 s 12; and the Civil List Act 1972 s 8(3).

### **UPDATE**

### **78 Payments to be charged on Consolidated Fund**

NOTE 3--Income and Corporation Taxes Act 1988 s 833(5)(a) repealed: Income Tax Act 2007 Sch 1 para 213, Sch 3 Pt 1.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(2) THE CIVIL LIST ARRANGEMENTS/79. Audit of the Civil List.

## **79. Audit of the Civil List.**

That element of the Civil List which is the responsibility of the departments of the Lord Chamberlain, the Lord Steward and the Master of the Horse must be audited by an officer appointed by the Treasury<sup>1</sup>. In accordance with instructions drawn up by the Treasury<sup>2</sup>, the officer is empowered to require the production of the departments' books, accounts and vouchers for analysis<sup>3</sup> and to summon persons before him for examination under oath<sup>4</sup>.

A statement of the accounts must be delivered to the Treasury<sup>5</sup>. The Treasury may either direct further examination of the statement or allow the accounts<sup>6</sup>. Allowance of the accounts by the Treasury, and a warrant issued under Her Majesty's sign manual<sup>7</sup> in pursuance of the allowance, constitutes a full and final discharge upon the accounts<sup>8</sup>.

1 See the Civil List Audit Act 1816 s 8 (amended by the Statute Law Revision Act 1890). The Civil List Audit Act 1816 is applied by the Civil List Act 1952 s 13(2); and the Civil List Act 1972 s 8(3). Persons convicted of giving false evidence before the officer are guilty of perjury: see the Perjury Act 1911 s 1(1), (2); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 712 et seq. The officer may receive such salary as Her Majesty thinks fit, not exceeding £1,500: see the Civil List Audit Act 1816 s 8 (as so amended). Officers are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt III: see PARLIAMENT vol 78 (2010) PARA 908.

2 See the Civil List Audit Act 1816 s 9 (amended by the Statute Law Revision Act 1888; and the Statute Law Revision Act 1890). As to the application of this provision see note 1 supra.

3 See the Civil List Audit Act 1816 s 8 (as amended and applied: see note 1 supra).

4 See ibid s 10 (amended by the Statute Law Revision Act 1890; the Statute Law (Repeals) Act 1981; and by virtue of the Supreme Court Act 1981 Sch 4 para 1). As to the application of this provision see note 1 supra.

5 See the Civil List Audit Act 1816 s 12 (amended by the Statute Law Revision Act 1888; and the Statute Law Revision Act 1890). As to the application of this provision see note 1 supra.

6 See note 5 supra.

7 As to the sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 908, 912; and as to its use in the case of illness or absence of the monarch see PARA 13 ante.

8 See note 5 supra.

## **UPDATE**

### **79 Audit of the Civil List**

NOTE 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(3) TAXATION OF THE MONARCH'S INCOME AND PROPERTY/80. Taxation of private estates.

### **(3) TAXATION OF THE MONARCH'S INCOME AND PROPERTY**

#### **80. Taxation of private estates.**

The Crown private estates<sup>1</sup> are subject to all rates, taxes, duties, assessments and impositions, parliamentary or parochial, in the same manner as the property of any citizen. Whilst the private estates are vested in the monarch or in any person in trust for the monarch, such rates, taxes and other charges are to be ascertained, rated, assessed or imposed as in the case of the property of a citizen<sup>2</sup>. Accounts of the rates, taxes and charges are directed to be returned to the person exercising the office of privy purse, and are to be paid out of the privy purse and in no other manner<sup>3</sup>.

1 As to the Crown private estates see CROWN PROPERTY vol 12(1) (Reissue) PARA 354 et seq.

2 See the Crown Private Estate Act 1800 s 6 (amended by the Statute Law Revision Act 1888); and the Crown Private Estates Act 1862 s 8. Since the abolition of liability to tax under the old Schedule A in 1963 (see generally INCOME TAXATION vol 23(1) (Reissue) PARA 45), the monarch is liable to pay only council tax for Sandringham and Balmoral. As to liability to council tax see generally RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 231 et seq.

3 See the Crown Private Estate Act 1800 s 7 (amended by the Statute Law Revision Act 1888); and the Crown Private Estates Act 1862 s 9.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(3) TAXATION OF THE MONARCH'S INCOME AND PROPERTY/81. The monarch's immunity from statutory taxation.

**81. The monarch's immunity from statutory taxation.**

At law, the monarch is not liable to assessment for income tax, and is entitled to claim repayment of any income tax suffered at source (for example on company dividends). She is not liable to capital gains tax, nor is her property liable to inheritance tax<sup>1</sup>.

1 As to the voluntary surrender of certain immunities by Elizabeth II since 1993 see PARA 82 post; and see more generally the *Report of the Select Committee on the Civil List* (HC Paper (1971-72) no 29) at 108-109.

Halsbury's Laws of England/CROWN AND ROYAL FAMILY (VOLUME 12(1) (REISSUE))/7. THE MONARCH'S PROPERTY AND FINANCES/(3) TAXATION OF THE MONARCH'S INCOME AND PROPERTY/82-100. Voluntary surrender of certain immunities.

**82-100. Voluntary surrender of certain immunities.**

Elizabeth II, following discussions with the Treasury, the Inland Revenue and the royal household, voluntarily entered into an agreement effective from 6 April 1993, which provides that the monarch will pay: (1) income tax on all the monarch's personal income, accruing from investments or other sources; (2) income tax on that part of the privy purse income which is used for the monarch's private purposes<sup>1</sup>; (3) capital gains tax on any realised capital gains on the monarch's private investments and the private proportion of the privy purse; and (4) inheritance tax on bequests or gifts made by the monarch, excluding the transfer of assets from the monarch to her successor. Elizabeth II and the Prince of Wales intend the voluntary agreement to continue indefinitely<sup>2</sup>. The agreement is administered by the Inland Revenue.

Although Elizabeth II is not liable to indirect taxation, where the indirect tax is levied on goods prior to purchase she obtains no relief. Moreover, where Elizabeth II imports goods, she pays import duties on them by long-standing custom<sup>3</sup>.

1 See PARA 68 ante.

2 See 218 HC Official Report (6th series), 11 February 1993, col 1113. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 384.

3 'She does pay all indirect taxes; in fact, she pays excise and customs duties, and when she comes back from abroad she declares her purchases abroad and is prepared to pay duty on them if the Customs want to charge it'; and again, 'They always buy wines and tobacco retail; therefore they buy at the tax-inclusive price': Sir Douglas Allen's replies to questions 410-411, contained in the *Minutes of Evidence taken before the Select Committee on the Civil List* (HC Paper (1971-72) no 29) at 51.